

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to list Mr. G. F. Osti on the Allegheny Division Welder Helper Seniority Roster (System Docket CR-923).

(2) Claimant G. F. Osti shall be listed on the Allegheny Division Welder Helper Seniority Roster with a seniority date equivalent to his 1965 Machine Operator-Grinder seniority date."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Following the creation of the Carrier from the predecessor carriers, the parties executed a Letter of Agreement dated January 26, 1979 standardizing job classifications, dovetailing operating division seniority districts and standardizing rules. Thereafter, Claimant appeared on the Allegheny B Machine Operators Seniority Roster. The Allegheny Welder Helper Seniority Roster, as was required to be posted on March 1 each year, was posted in 1982 and 1983 without Claimant's name. By letter dated March 22, 1984, Claimant protested the failure to include his name on that roster. No written protests were filed by Claimant prior to that date.

The Organization argues that Claimant was improperly omitted from the Welder Helper Seniority Roster. The Carrier argues the opposite and further asserts that Claimant's protest is barred because it was not filed in a timely fashion.

We are unable to reach the merits of the Organization's argument. We agree with the Carrier that, in this case, Claimant failed to file his protest in a timely fashion.

Rule 4, Section 6 states, in pertinent part:

"Section 6. Seniority rosters.

(a) A roster, revised as of January 1 and to be posted March 1, showing the employee's seniority date in the appropriate seniority district will be posted within such seniority district at head-quarter points where employees are required to report for work. Copies of all rosters will be furnished the General Chairman and the involved local representatives(s).

(b) Employees shall have 90 days from the date the roster is posted to file a protest, in writing, with the designated officer of the Company, with copy furnished the General Chairman and local representative. Employees off duty on leave of absence, furlough, sickness, disability, jury duty or suspension at the time the roster is posted, will have not less than 90 days from the date they return to duty to enter protest."

Section 6(b) clearly requires that protests must be filed within 90 days from the date the roster is posted. Claimant did not file his protest until more than two years after the posting of the initial list. The protest is clearly untimely. See Third Division Award 25874 involving this Carrier and relying upon Third Division Award 12297:

"[A]Board should not in good conscience upset a long established list where Claimant 'sat supinely by, while the rights and obligations of the Carrier, Organization and employees listed on the roster crystalized.'"

By the terms of the Rule, the time for Claimant to have filed his protest was within 90 days after the posting of the 1982 list. In its submission, the Carrier indicates that justification may have existed for failing to file a protest at that time since the roster was posted on the same day that the Schedule Agreement became effective. Thus, giving Claimant the benefit of the doubt, we nevertheless can find no justification for Claimant's failure to timely protest the 1983 posting. Having failed to do so, Claimant cannot now protest at such a late date. No new or mitigating circumstances have been offered to justify Claimant's delay.

Agreeing with the Organization's argument would result in potential chaos for the crucial rights and obligations established by the previously posted lists. For that reason we believe under the particular circumstances of this case that the awards cited by the Organization holding that seniority rosters are evidence of seniority rights but are not creators of those rights (Third Division Awards 23282, 7586 and 3625) are distinguishable and the line of awards exemplified by Award 25874, which is the most recent between the parties here in dispute. The scope and impact of 1979 Letter of Agreement on the seniority rights of the many employees affected by the creation of the Carrier required stability in terms of determining the relative seniority rights of all the employees who came from the predecessor carriers. On balance, that element of stability requires in this case that the employee who sat on his rights be precluded from protesting the loss of those rights when that protest comes at such a late time.

The fact Claimant asserts that he made oral inquiries concerning his placement on the Welder-Helper Seniority Roster when the roster initially came out also does not require a sustaining award. Rule 4, Section 6(b) is specific. The protest must be "in writing." The fact that Claimant made such inquiries indicates that he was aware of the issue and is further evidence of the conclusion that he rested on his rights. Finally, we are not satisfied that the Organization has sufficiently demonstrated that, as a practice, the Carrier has ignored the requirements of Rule 4, Section 6(b) and permitted protests outside of the 90 day period.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.