

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27609
Docket No. SG-27096
88-3-86-3-155

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Seniority Roster protest by S. A. Klick, that the Carrier be required to remove the Inspector and Foreman Seniority of B. B. Huling from the Seniority Roster No. 7 in accordance with Paragraph 10, APPENDIX 'R' of the Agreement. Carrier file: SD-1971-RP"

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 waived right of appearance at hearing thereon.

By letter dated June 29, 1982, Claimant, who is also the Local Chairman, filed a protest requesting that B. B. Huling's name be removed from the Seniority District #7 roster for Inspector-class (a) and Foreman-class (b). According to Claimant's protest, "Mr. Huling did not hold any bulletined positioned [sic] in this seniority district that I am aware of. If he is entitled to these dates on our roster, then I request some proof to back up these dates." The particular roster showed Huling as holding seniority dates of June 2, 1976, in classes a and b. The protest was forwarded by the Organization to the Carrier by letter dated July 16, 1982, and was received by the Carrier on July 19, 1982.

By letter dated January 26, 1983, pursuant to Paragraph 11 of Appendix R, the Carrier submitted a proposed joint response to the Organization denying the protest stating that Huling was awarded a Foreman position on June 2, 1976, and Huling displaced into an Inspector position in May, 1979, each position being in Seniority District 7. The proposed response was not acted upon by the Organization.

By letter dated October 26, 1983, in response to a discussion with the Organization, the Carrier noted the seniority dates and further stated that Huling was promoted to a non-agreement position as Assistant Supervisor C&S at Harrisburg, Pennsylvania on July 13, 1979, and held that position beyond the effective date of the then-current agreement. According to the Carrier, Huling held both Inspector and Foreman positions within the territorial limits of Seniority District 7 prior to September 1, 1981, established seniority in those positions in that district pursuant to Appendix R and, although promoted, nevertheless retained and accumulated seniority.

The matter apparently remained dormant for slightly less than two years. After further discussion on August 19, 1985, with the Organization, by letter dated October 15, 1985, the Carrier maintained the propriety of Huling's seniority and supplied the Organization with a May 1, 1976, bulletin advertising a Foreman's position within the district with a notation showing that Huling's name appeared next to the title of such position. The Carrier further forwarded to the Organization a copy of Huling's application for that position.

By letter dated October 29, 1985, the Organization rejected the offered proof as insufficient asserting that a bulletin awarding Huling the position was necessary to establish the Carrier's assertions. The Organization further stated that Huling's craft seniority was within Seniority District #13 and once Huling vacated the Foreman/Inspector position to accept another job, he relinquished his seniority on the foreign district and only held seniority on his home district. Positions of the parties did not change as reflected in their later correspondence concerning the dispute.

We find that the Claim must be sustained.

First, we must reject the Carrier's assertion that the Claim is barred by the doctrine of laches. While the Claim is indeed old - a fact that we find troubling - and while this Board has readily recognized that a party cannot sleep on its rights (see Third Division Awards 26301, 25946, 25110), another basic doctrine prohibits us from considering the Carrier's laches argument. The laches argument was never raised on the property and as such may not be considered by us at this time. See e.g., Third Division Award 20920.

Second, aside from its laches argument concerning the asserted delay by the Organization in the processing of the dispute, the Carrier also argues that the initial protest was untimely filed asserting that the seniority at issue was established in 1976 and was not protested until 1982. Like the laches argument the timeliness of the filing of the protest was not raised on the property and therefore cannot now be considered by us. However, even assuming that we could consider such an argument, we find it lacking in merit. Recently, where the timeliness issue concerning the filing of a seniority protest was raised on the property, we barred seniority protests as being

untimely filed where employees waited to file the protests through the posting of several seniority lists under another agreement. See Third Division Awards 27313, 27314, 27315, 27316, 27317, 27318. This case does not fall into that same category. Here, there is no showing that the initial protest was not timely filed after the posting of the seniority list. In this case, the protest was dated June 29, 1982, and was forwarded by the Organization to the Carrier by letter dated July 16, 1982, and was received by the Carrier on July 19, 1982. In its submission, the Carrier states that the effective Agreement governing the dispute is the September 1, 1981 Agreement. Paragraph 11 of Appendix R of the Agreement (which the Carrier states "was inserted by the parties to override the normal Rule concerning Roster protests ... [and] was in effect only for the first roster published under the new Agreement of 1981") states that the initial seniority rosters "shall be open to protest for a period of one (1) year from the date posted." Thus, we can only conclude that Claimant's June 29, 1982, protest was timely filed. The delay in this case came not in the filing of the protest, but in the processing of the protest, which, for reasons stated above, cannot now be considered by us since the laches argument was not raised on the property.

Third, for similar reasons, we must reject the argument that specific rules were not cited. Like the laches and timeliness arguments, that argument was also not raised on the property and is not now properly before us.

Fourth, with respect to our alleged lack of jurisdiction due to the failure of the Organization to sign the proposed joint decision, we do not agree that signing of the joint decision is a condition precedent to further processing of this Claim. The Carrier argues that "[a]ppeal can only be made when the joint committee reaches an impasse [and t]he Rule does not provide for the progression of the dispute, when one of the parties to the joint committee, without justification, does not sign the decision." However, the cited language in Rule 11 relied upon by the Carrier does not support the Carrier's argument. Paragraph 11 cited to us merely states that the parties "shall jointly decide such protests." Thus, on the record before us, we can only conclude that the fact that the Organization did not sign the joint decision after the seniority protest was filed, at best, indicates that the Organization disagreed with the Carrier's position which then resulted in the further processing of this dispute.

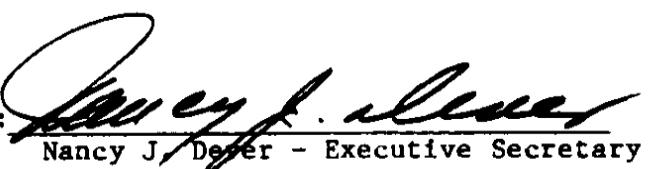
Finally, with respect to the merits, it appears undisputed that in 1979 Huling vacated his Foreman/Inspector position and took a non-agreement position at Harrisburg, Pennsylvania. The statement contained in the Organization's October 29, 1985, letter (reiterated again in its January 10, 1986 letter) that Huling's "craft seniority lies within Seniority District #13" is not disputed. Paragraph 10 of Appendix R is clear and mandatory. "Seniority in class (a), (b), (c), or (d) in other than his home seniority district shall be forfeited when he leaves the seniority class in which he is working." [Emphasis added]. By this record, Huling left classes (a) and (b) in Seniority District #7 when he transferred to District #13. Under the clear

language of the Rule, Huling forfeited his seniority in District #7. We note that in its October 26, 1983, letter to the Organization, the Carrier stated that "Both the former P.R.R. Agreement and the Agreement of February 10, 1976, provide an employee promoted to a position not covered by the Agreement retains and accumulates seniority under the Agreement." That argument was not pressed in the Carrier's submission before us. Therefore, we have not been shown in this record by the arguments made to us how those provisions remain viable in light of the clear forfeiture language found in Paragraph 10 of Appendix R.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.