

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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. W. Szczepanski on the New York Division Electric Traction Department Substation Seniority Roster for 1987 and subsequent years.

(2) The Agreement was further violated when the Carrier failed and refused to allow Mr. W. Szczepanski to displace a junior sub-station helper at the New York Division Electric Traction Substation on October 2, 1987 (System File NEC-BMWE-SD-2032).

(3) As a consequence of the violation referred to in Part (1) above, Mr. W. Szczepanski shall be listed on the New York Division Electric Traction Department Seniority Roster with a sub-station electrician helper date of August 9, 1984.

(4) As a consequence of the violation referred to in Part (2) above, Mr. W. Szczepanski shall be compensated for all wage loss suffered beginning October 5, 1987 and continuing until the violation is corrected."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant began service with the Carrier as a Trackman in the Track Department on August 1, 1983. After being furloughed from that department, Claimant secured work in the Electric Traction Department on August 9, 1984. Claimant established separate seniority in each department by virtue of Rule 18 of the Agreement. Claimant was furloughed from the Electric Traction Department on November 21, 1984, as part of a reduction in force. However, Claimant was able to obtain work in the Track Department. Thereafter, Claimant was furloughed and recalled several times in the Track Department, but performed no work in the Electric Traction Department. Claimant's name was deleted from the 1987 Electric Traction Department seniority roster effective March 1, 1987. The roster was signed jointly by representatives of the Carrier and the Organization and stated that pursuant to Rule 16 of the Agreement the time limit for appeals concerning the roster ended May 24, 1987. At the time the roster issued, and during the appeal period, Claimant was working in the Track Department.

On October 1, 1987, Claimant's position in the Track Department was abolished. On October 2, 1987, Claimant attempted to exercise his seniority in the Electric Traction Department. The Carrier refused to allow him to do so on the ground that he no longer possessed Electric Traction Department seniority by virtue of the elimination of Claimant's name from the March 1987 seniority roster. On October 5, 1987, Claimant exercised seniority to another position in the Track Department. The Claim in this case followed.

The Carrier denied the Claim. The Organization appealed the denial to the Carrier's highest designated officer. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

The gravamen of the dispute is that the Carrier improperly removed Claimant from the March 1987 Electric Traction Department seniority roster, which effectively terminated Claimant's seniority in that department. The Carrier interposes the procedural objection that any challenge to the removal of Claimant's name from that roster is barred by Rule 16(c) of the Agreement because neither Claimant nor his Representative appealed the deletion of his name from the March 1987 roster within sixty days of March 1 as provided in the Rule.

Maintaining that the Carrier inadvertently removed Claimant from the March 1987 seniority roster, the Organization argues that this case falls within the specific exemption in Rule 16(c) making the sixty-day time limit inapplicable ". . . to obvious clerical errors." Alternatively, the Organization argues that the Carrier's improper removal of Claimant from the seniority roster constituted a violation of the Agreement, which the Carrier may not rely upon to defeat the Claim procedurally.

Rule 16(c) is clear. Unless an employee protests any impropriety with respect to his listing on a seniority roster ". . . further appeals will not be entertained. . . ." Claimant made no protest of his elimination from the March 1987 seniority roster within sixty days of March 1. Accordingly, he was barred thereafter from making such protest.

We cannot agree with the Organization that Claimant's removal from the seniority roster was an obvious clerical error for purposes of the exception set forth in Rule 16(c). The record supports the conclusion that the Carrier purposefully removed Claimant from the roster on the ground that he had forfeited his seniority as provided in Rule 18(d) of the Agreement for failing to comply with the provisions of Rule 18(c). Whether the Carrier's action was proper under Rule 18(d) is not the issue. The point is that Claimant's removal from the roster reasonably cannot be characterized as clerical error.

Nor do we find merit in the Organization's argument that the Carrier cannot interpose the sixty-day time limit of Rule 16(c) because that argument rests upon the Carrier's violation of the Agreement, i.e., Claimant's allegedly wrongful removal from the seniority roster. If that were true the sixty-day time limit of Rule 16(c) would have no applicability to any situation where the Carrier wrongfully removes an employee from the roster, or wrongfully misplaces one on the roster. The time limit would apply only to situations where the Carrier's action under Rule 16(c) was correct. We do not believe the parties intended the sixty-day time limit of Rule 16(c) to have such narrow application. We find Third Division Award 14329 to be inapposite inasmuch as a time limit was not involved in that case.

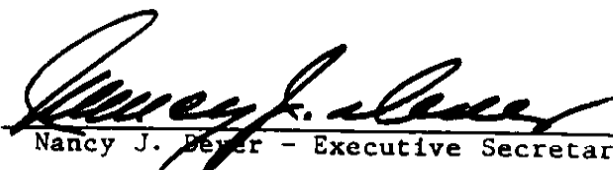
In the final analysis we must conclude that the Claim is barred by Rule 16(c).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.