

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31134
Docket No. MW-31827
95-3-94-3-120

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 omitted the name of Mr. W. Harris from the 1992 BMW Inter-regional No. 2 Trackman's Seniority Roster and thereafter failed and refused to correct same (System Docket MW-2816).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Harris' seniority date of March 30, 1977 shall be restored to its appropriate standing on the BMW Inter-regional No. 2 Trackman's Seniority Roster."

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 employee 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.

Carrier, on the contention that Claimant forfeited his seniority on May 15, 1990, did not list him on the 1991 Inter-Regional No. 2 Trackman's Roster. This roster was posted on April 22, 1991, and the time limit for challenges and appeals expired on July 30, 1991. The Organization did not protest Claimant's exclusion from the 1991 Roster, nor did the Claimant do so. When the 1992 Roster was posted, the Organization, on May 26, 1992, filed a claim contending that Grievant's name had been improperly omitted from that Roster. Carrier has challenged this claim, both as the appropriate merits of not continuing Claimant on the Roster, and that the protest that his name was omitted was untimely under the Agreement.

The Organization contends that Carrier forfeited its right to challenge the timeliness of the 1992 Roster protest because it was not advanced at the first level of handling given the protest. Further, on the merits, the Organization argues that the removal of Claimant from the 1991 Roster was not proper under the terms of the Agreement.

The Organization's argument that Carrier forfeited its right to raise a timeliness argument because it was not raised at the first level of handling is not found to be persuasive. There is nothing in the parties Agreement, that this Board is aware of, that requires that all contentions and arguments, in support of a denial or dismissal of a claim or grievance, must be advanced at the first level of handling, or thereafter be barred from consideration. If the Organization were correct in this argument, there would be no need for the appeal process. A basic purpose of a multi-step appeal process is to perfect one's position, as well as give further consideration to the other's arguments. Carrier's timeliness argument was raised while the matter was under consideration on the property. That is all that is required to place that contention properly before this Board.

After looking at Carrier's timeliness argument, the Board is persuaded that it has merit. Claimant's name was left off the 1991 Roster. No protest over the exclusion was filed at that time. Accordingly, the 1991 Roster must be considered as correct from that time forward. The issuance of the 1992 Roster does not reopen an opportunity to challenge changes or omissions made to earlier rosters. The only challenges that could properly be made after the 1992 Roster was issued are those that involved changes or omissions between the 1991 Roster and the 1992 Roster. Any other result would be out of step with the language of Rule 4, Section 6, paragraph (a) of the Agreement.

Accordingly, the Board must conclude that the Claimant's roster protest was not timely registered. His name was not included on the 1991 roster. If the failure to include his name on the 1991 Roster was somehow in error, it should have been protested in 1991, but it was not. The claim of the Organization must be denied. In reaching this result no determination is made as to the correctness of Claimant's forfeiture of seniority on the Regional No. 2 Trackman's Roster on May 15, 1990, as that forfeiture was not challenged when the 1991 Roster was issued.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.