

PUBLIC LAW BOARD NO. 4219
ESTABLISHED UNDER AGREEMENT BETWEEN THE PARTIES

Neutral Member: Lamont E. Stallworth
Case No. 6

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
and

Union Pacific Railroad Company.

STATEMENT OF CLAIM Claim of the Brotherhood that:

1. Protestants contend the Letter of Agreement, dated March 8, 1983, between the BMW General Chairman and the Carrier's Chief Engineer correcting the seniority date of Mr. M. L. Porteous was not entered into by the parties within the time frame as specified by Rule 17 (b) of the current Agreement.

2. Protestants further contend Mr. M. L. Porteous's name should be removed from Group 7 Roster because of his failure to properly protest the omission of his name on the 1984 and 1985 Seniority Roster.

OPINION OF BOARD: This dispute originated sometime in the mid-1970's when employee Mr. M. L. Porteous was promoted from a track inspector to a foreman position. For a period of at least 1976 through 1980 his name did not appear on the seniority roster for track inspectors, and he did nothing to contest this omission.

In 1980 the Carrier and the Organization realized that a number of errors in various seniority rosters had arisen over the years. Therefore they established a special agreement whereby protests over the 1981 seniority roster would be considered outside of the normal period established in Rule 17(b) of the Agreement. Rule 17(b) normally establishes a 90-day period from the date of posting of the seniority roster for employees to

protest seniority problems. The 1981 agreement, however, allowed protests to be filed over the 1981 roster until the end of February, 1982. (Exhibits A-1 through A-4).

The Carrier and the Organization in their joint ex parte submission state that Mr. Porteous initially raised his objection to his omission from the track inspector seniority roster at a union meeting at the very end of this special 1981-82 grace period. The first documentary evidence of the protest appears in a letter dated March 13, 1982 (Exhibit A-5). The Carrier initially denied the claim because Mr. Porteous had failed to raise it for seven years (Exhibit A-7). However, the Carrier later reversed its position, acknowledging that it had misapplied Rule 22(e), which allows an employee to retain his seniority in his original classification when he takes a Section Foreman job. (Exhibit A-11).

The Carrier also raised the issue of whether Mr. Porteous had raised his original claim within the 1981-82 special amnesty period (Exhibit A-14). However, eventually the Carrier and the Organization agreed that Mr. Porteous would be placed on the seniority list for track inspectors in Class (a), Group 7, by letter dated March 8, 1983. (Exhibit A-15).

This letter did not correct the problem, however, because Mr. Porteous' name failed to appear on both the 1984 and the 1985 seniority rosters. The file contains no evidence of a written protest of these omissions by Mr. Porteous. However, a letter from Diane E. McMahon, a former employee of the Carrier who was

responsible for composing the list, stated that the Carrier was responsible for these omissions and that Mr. Porteous was very vocal in protesting them each year. (Exhibit A-17).

Apparently Mr. Porteous was finally placed on the 1986 seniority roster, with a seniority date of 1973. This generated a series of protests from other employees who were either threatened with, or were in fact bumped by his exercise of his placement on the track inspector seniority roster. These letters primarily protested the fact that the Parties had not adhered to Rule 17(b), in that Mr. Porteous had been allowed to contest his seniority placement years after the original mistake had been made in omitting his name from the roster.

The Organization and the Carrier, in responding to the protestants, stated that they had the ability to waive the rules, and had waived the strict requirements of Rule 17(b) in many other cases. Eventually, however, the Parties agreed to bring the claim before this Board for review.

This Board concurs that the Parties have not violated the Agreement by waiving Rule 17(b) and placing Mr. Porteous on the seniority roster. In a written agreement dated March 8, 1983 and signed by representatives of both the Carrier and the Organization, the Parties agreed that Mr. Porteous would be placed on the track inspector seniority roster, with a seniority date going back to 1973. Thus, both the Organization and the Carrier agreed to waive the strict requirements of Rule 17(b).

The Organization, in responding to the protestants, stated that these type of agreements are common when the Carrier has made a mistake regarding an employee's seniority date, and for some reason that mistake is not raised within the contractual time limits. (See Letter No. 30). Furthermore, the by-laws of the Organization specifically permit it to enter into adjustments over the application of the Agreement. For example, Article VII of the by-laws of the Organization's Union Pacific System Division permit the Joint Protective Board to

negotiate changes in the Agreement with the management of the railroads comprising the Union Pacific System Division for rates of pay and working conditions in behalf of all employees coming under the jurisdiction of this System Division.

(Exhibit A-19).

In addition, Article XXI of the Grand Lodge's Constitution and By-Laws give the Brotherhood the full and sole authority to represent all employees in the "negotiating, interpreting and applying of agreements." (Exhibit A-18). From these sections this Board concludes that the Organization acted within its authority when it adjusted the seniority date of Mr. Porteous.

The protestants believe that the Parties have trampled on their rights by adjusting the rights of Mr. Porteous. There is often discontent when there is an adjustment in seniority, and when job benefits are awarded on a competitive basis using seniority. Some employees benefit and others are disadvantaged by the change.

AWARDS

Lamont E. Stallworth

Neutral Member



Organization Member



Carrier Member

DATED: DECEMBER 15, 1987