

AWARD NO. 1
CASE NO. 1

Brotherhood of Maintenance of Way Employees
and
Kansas City Southern Railway Company
(former SouthRail Corporation)

DATE: January 14, 2001

"Claim-of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to afford Mr. M. Evans, Jr. a seniority date on the SouthRail Foreman's Seniority Roster as of April 20, 1994 (Carrier's File 013.31-492 SRL).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall allow Mr. M. Evans, Jr. a seniority date of April 20, 1994 on the SouthRail Foreman's Seniority Roster."

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Bulletin No. 159, dated April 20, 1994, awarded Claimant the position of Utility Track Foreman on Mobile Gang No. 288. There is no dispute that he assumed the position at the first available opportunity. However, by bulletin dated May 27, 1994, Claimant was awarded the position of Heavy Machine Operator on Mobile Gang No. 257. As a result, Claimant worked only 27 calendar days in the Utility Track Foreman position. By letter dated June 22, 1994, Carrier informed Claimant that he had not established seniority as a Track Foreman. Thinking

that he had been disqualified, Claimant requested a hearing pursuant to Rule 15(b). Carrier wrote Claimant and denied him the requested hearing because, it said, Claimant had not been disqualified. Instead, Carrier went on to explain that Rule 18(a) required Claimant to work in the Utility Track Foreman position for thirty working days to qualify for the Foreman position.

In Carrier's view, since Claimant failed to hold the Foreman position for the full thirty day period, he did not qualify and, therefore, was not entitled to Foreman seniority. The Organization and Claimant, on the other hand, maintain that Claimant established Foreman seniority as of the date of his award to the Utility Track Foreman position, April 20, 1994, per Rule 12. Since Claimant was never formally disqualified, he retained the seniority.

The parties concede that the instant dispute is one of first impression between them. After careful consideration of the entire record, we find the evidence to weigh in favor of the Organization's position. Rule 12 reads, in pertinent part, as follows:

RULE 12

SENIORITY DATUM

(a) Persons entering the service will establish seniority when their compensation starts. An employee will establish seniority in a group on which seniority has not been previously established as of the date of the award to a position in such group, in accordance with Rule 17, provided such employee assumes such position at the first available opportunity.


* * *


It is undisputed that Claimant satisfied all of the requirements of Rule 12(a) upon which establishment of seniority was conditioned. Rule 18(a) merely outlines the rights of an employee who fails to qualify with a thirty day period. It does not state that an employee must work the full thirty days to be considered qualified nor does it anywhere use the word "seniority" or explicitly deal with the subject of seniority.


On this record, therefore, we must conclude that Claimant established Track Foreman seniority as of April 20, 1994 in accordance with rule 12. Given that Claimant was not formally disqualified as a Track Foreman and that no rule has been cited that would properly remove such

seniority, we must sustain this Claim.

AWARD: The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


John S. Morse,
Carrier Member