BEFORE
PUBLIC LAW BOARD NO. 85

AWARD NO. 1
(Case No. 1)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

QUESTION PRESENTED:

"Do the employees identified as
H. Adams, A. L. Johnson, O. M.
Morgan, and N. W. Lamb hold
seniority rights in Group No. 9,
Roadmaster Raaf's territory,
Old Arkansas Division?"

The employes named in the question, herein referred to collectively as the Principals, held positions known on the property as "Bluff Patrolmen," Group 12. The positions were abolished November 2, 1966. The Question Presented was refined by stipulation during the course of the hearing to:

"Did the Principals hold seniority
in Group 9 at the time their
Group 12 positions were abolished?"

JURISDICTION:

This Board (Public Law Board No. 85) was duly established by Agreement of the parties, executed November 21, 1967, as provided for in Public Law 89-456 (80 Stat. 208) and in compliance with Regulations promulgated by the National Mediation Board by authority of said statute (F. R. Doc. 66-12451). The aforementioned Agreement is incorporated herein by reference thereto. In the Agreement Carrier designated G. E. Mallery as Carrier Member of the Board. When the Board convened Carrier

designated Eugene E. Margason as Carrier Member in the place and stead of G. E. Mallery in compliance with paragraph (B) of the Agreement.

OPINION OF BOARD:

Seniority rosters are posted June 1 of each year. The Group 9 roster posted June 1, 1966 -- the one current on the date here involved -- and the rosters for 10 preceding years for the same Group include the names of the Principals and a notation that each of them also held seniority in Group 12. The Principals were also named on the contemporary Group 12 rosters. The issue is whether the Principals had vested contractual seniority rights in Group 9 when their Group 12 positions were abolished on November 2, 1966.

1. Pertinent Provisions Schedule Agreement

Rule 1. Scope, reads in pertinent part:

"Track Department employees shall be divided into the following classes:

. . .

"GROUP 9. (a) Track Patrolmen. (See Memo No. 10)
(b) Sectionmen comprise all laborers working under the direction of Section Foremen or Yard Foremen.

. . .

"GROUP 12. Track, Tunnel, Bridge and Highway Crossing Watchmen."

Rule 2 relative to seniority states:

"RULE 2 (a) Seniority begins when employee's pay starts, except promoted employees will establish seniority in the higher class only from the date assigned by bulletin to such vacancy or new position. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with these railways as hereinafter provided.

(b) Seniority rights of employees in seniority groups 1, 2, 3, 4, 5, 7, 8, 12, and 15 are confined to their respective groups. Employees in seniority group 6 likewise hold seniority in seniority group 9. Seniority rights of employees in seniority groups 6, 9, 10 and 11 and in groups 6, 9, 13 and 14 are interchangeable as per provisions of these rules.

(c) Scope of Roster. Seniority rosters will show the name and date of entry of the employees into the service of these railways and date of promotion by classes, and will be separately compiled for each group by seniority districts, except that names of laborers will not be included on seniority rosters until they have been in actual service in excess of ninety (90) days in any six (6) months period.

(d) Roster. Rosters will be revised and posted in June of each year and will be open to protest for a period of sixty (60) days from date of posting. Effective with posting of roster of June 1st, 1936, protests on seniority dates for correction will be confined to names added since posting of previous annual roster, except to correct typographical errors."

The displacement rights of the Group 9 classification of Section men are found in:

"Rule 3. (a) RIGHTS OF SECTION MEN. Seniority rights of section men, as regards retention in service, will be restricted to their respective gangs, except that when force is reduced section men affected may displace section men junior in service under their respective Roadmasters."

Neither Group 9 or Group 12, as contractually defined, includes a classification of "Bluff Patrolmen." However this causes no concern inasmuch as there is no dispute that the positions held by the Principals were in fact classified as Group 12 and were historically carried on the Group 12 seniority roster. The issue, we repeat, is whether the Principals were vested with Group 9 seniority rights at the time their Group 12 positions were abolished.

2. Positions of the Parties

It is the position of the Organization that Rule 2(b), supra, is a specific provision of the Schedule Agreement which confines the seniority rights of Group 12 employes "to their respective" group; therefore, the Principals were contractually barred from acquiring or holding seniority rights in Group 9, the inclusion of their names on the Group 9 roster notwithstanding.

Carrier contends that Rule 2(d), supra, is the applicable Rule and since the Organization or the Principals did not protest, timely, the inclusion of the names of the Principals on the Group 9 roster within sixty (60) days of June 1, 1966, the roster may not be impeached; ergo, the Principals at the time of the abolishment of their Group 12 positions, November 2, 1966, were contractually vested with Group 9 seniority rights.

3. Resolution

At the outset we take cognizance of the Congressional mandate in Section 2 of the Railway Labor Act that:

"GENERAL DUTIES

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

We find no evidence in this record that the Principals either personally or by their representative ever protested the inclusion of their respective names on the Group 9 seniority rosters posted over a number of years; and, particularly within sixty (60) days from the posting of the June 1, 1966 roster.

The resolution of the question presented must be founded on principles of contract construction as to whether Rule 2(b) or Rule 2(d) prevails.

In National Railroad Adjustment Board, Third Division, Award No. 11077, in which was involved the application of a time limit rule relative to protesting seniority rosters, the Division found and held:

> "On or about January 1, 1957 a seniority list was posted which did not include Claimant's name among the 2nd Cooks; and a copy was mailed to the General Chairman on January 15, 1957. On

March 8, 1957 more than 'thirty (30) days from the date of posting', the General Chairman called to the attention of the Carrier the omission of Claimant's name from the 1957 seniority list. When Carrier refused to insert Claimant's name, Petitioner filed claim.

"The obvious purpose of Rule 15(c) is to provide an agreed upon period during which either party to the Agreement or an aggrieved employee can challenge any listing or ommissions in the seniority list. In the absence of any such challenge within the time prescribed, the seniority list, as posted, becomes binding as to all parties for the balance of the period to the time of the next posting. Inasmuch as neither Petitioner or Claimant sought correction of the 1957 list within a period of thirty (30) days, Petitioner and Claimant are estopped, by operation of the Agreement, from attacking the list as posted. We must, therefore, deny the claim." (Emphasis added.)

And, in that Division's Award No. 13844, it held:

"Recognizing that stabilization of employe seniority is of the utmost importance both to the employes and to the Carrier, it is evident that in the absence of some prescription in the Agreement, some method had to be employed to rank employees having the same seniority date under the Rules of the Agreement, if the Organization or an employe is of the opinion that the method employed is destructive of seniority rights, the time to raise the issue is within 60 days of the posting of the seniority roster as provided in Rule 4(b); and further, if issue is not raised within the prescribed time limitations the seniority rank appearing on the roster is current. Thus is effected contractual vesting of fixed seniority rights of value to both employes and Carrier.

"In the instant case neither Claimant nor the Organization exercised, timely, the right to challenge, as incorrect, the Claimants seniority rank as listed on the July 1, 1962, seniority roster. That roster, at the time of Claimants displacement, was current and not subject to attack. On that roster the employe, who displaced Claimant while it was current, ranked seniority-wise, thereon, before Claimant. We find, therefore that Claimant's displacement by Hubbard on December 21, 1962, did not violate Claimant's seniority rights. We will deny the claim." (Emphasis added.)

See and compare Third Division Award Nos. 12297, 3978, 11841.

Organization's contention that Rule 2(b) prevails over Rule 2(d) subsequent to the time limitation for filing protest, agreed to in Rule 2(d), would make Rule 2(d) meaningless surplusage. We cannot conclude that the parties intended that Rule 2(d) be not interpreted and applied to enjoin attack upon a seniority roster, by

carrier, the organization or employes, later than sixty (60) days from the date of posting.

Seniority has no inherent value in the employer-employe relationship. Seniority rights are a creature of contract, express or implied. A reading of Rule 2 convinces us that its unambiguous provisions support the conclusion that if the Carrier, Organization or employes fail to protest the seniority holdings evidenced on the seniority rosters, within the sixty (60) days prescribed in Rule 2(d), each of them is contractually bound to honor the seniority rights of the employes as reflected on the roster -- this even though the roster, as posted, gives an employe greater or less seniority rights than other provisions of the Agreement, standing alone, would vest. Rules, such as 2(d), are designed to put at rest disputes as to the employee's seniority entitlements. It gives all parties -- agreed to by them -- the right to protest their respective interest within the time limit prescribed. And, the corollary is that failure to protest, within the time limitations, evidences agreement that the seniority list as posted stands agreed to.

We find and hold, for the foregoing reasons, that the Principals were vested with Group 9 seniority at the time their Group 12 positions were abolished. We will so award.

FINDINGS:

Public Law Board No. 85, upon the whole record and all the evidence, finds and holds:

1. That Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

2. That this Board has jurisdiction over the dispute involved herein, and;

3. That the answer to the Question Presented is in the affirmative.

AWARD

The Principals were vested with Group 9 seniority as of the time their positions in Group 12 were abolished.

ORDER

This Award, it is ordered, will be effective as of the date of its execution as appears below.

John H. Dorsey, Chairman
Neutral Member

Eugene E. Margason, Carrier Member

Jay W. Cope, Employe Member

Dated at Chicago, Illinois, this day of 1968.