

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement by failing to allow Mr. W. B. Austin to exercise his seniority rights to the position of Water Service Supervisor on the combined Palestine-San Antonio Divisions now identified as the Palestine Division as of November 1, 1959.

(2) Mr. W. B. Austin be now compensated for the difference in pay received as a Water Service Repairman and the rate of pay he should have received as Fuel and Water Service Supervisor commencing November 1, 1959, and continuing until the Carrier corrects this violation of the Agreement referred to.

(3) Water Service Repairman Mr. Boyd Austin be now assigned to the position of Fuel and Water Service Supervisor on the Palestine Division.

FINDINGS: On January 1, 1959, the Palestine and San Antonio Divisions were consolidated and the seniority of employes on the two divisions was merged. The consolidated roster showed J. T. Zimmerman with seniority as a water service supervisor from January 1, 1945, and Claimant Austin with seniority as water service supervisor from January 15, 1947. On October 31, 1959, one of the positions of fuel and water service supervisor on the combined divisions was discontinued and Zimmerman continued in the remaining position. This claim was filed thereon.

When claimant returned to the service of the Carrier after service in the Armed Forces during World War II, he claimed the right to a water service supervisor position which had been established and occupied by Zimmerman on January 1, 1945. There is no question but that at the time this position was established there was an understanding between the Carrier and the Assistant General Chairman that such position was a supervisory position outside the scope of the Agreement. The Carrier denied that the claimant was entitled to such position at that time.

Claimant initiated a lawsuit and other claims against the Carrier which were settled in 1947 by an agreement in April to appoint him to the position of water service supervisor effective June 15, 1947.

There is a conflict in the evidence regarding the last clause of a letter from the Carrier to claimant dated May 19, 1947, which on claimant's copy states "with seniority date as supervisor to be October 1, 1943." Such phrase does not appear on Carrier's copy of that letter. It appears that such conflict need not be resolved because such an individual agreement, if made, would be unlawful, a violation of and unenforceable under the collective bargaining agreement and, perhaps, in

conflict with the seniority rights of other employes. It is not permissible for a carrier and an individual employe to enter into special retroactive seniority agreements, particularly where enforcement is sought under a collective agreement.

Effective July 13, 1949, there was agreement that the positions of water service supervisors would thereafter be within the scope of the Maintenance of Way Agreement and the Carrier correctly gave to those persons who had served in such capacity seniority for such positions from the date of their first service thereon. The Employes rely upon Special Decision MW 51-2 but we find it not applicable to this matter because it was applicable only to the exercise of seniority rights by people returning from the Armed Services, to positions bulletined in their absence, within 10 days after return, if possessing sufficient qualifications.

At the time claimant returned from service the position of water service supervisor was not within the scope of the Agreement and he had no seniority right thereto. The subsequent inclusion of such position within the scope of the Agreement was not retroactive so there is no possible basis for the contention that Decision MW 51-2 is applicable. Under the circumstances evidenced in this docket, the claim is without merit.

It should be noted for the record that there is another reason why the claim must be denied. It is barred under the time limit provisions of the August 21, 1954 Agreement as contended by the Carrier in its submission.

AWARD: Claim denied.

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(s) Dudley E. Whiting
Dudley E. Whiting - Chairman

(s) A. J. Cunningham
A. J. Cunningham - Employe Member

(s) G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
September 6, 1962