

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 127

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of S. M. Brewer and G. T. Philpott requesting their existing Flagging Foreman seniority dates be changed to May 24, 1996 and May 25, 1971, respectively, to correspond with the dates that the Claimants established A-2 seniority in the Maintenance of Way -- Track subdepoartment.

(File CS-MW-1-58-2)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant Philpott established Assistant Foreman seniority on May 25, 1971, and Foreman seniority on March 31, 1978. Carrier assigned Claimant Philpott a Flagging Foreman seniority date of March 31, 1978. Similarly, Claimant Brewer established Track Repairman seniority on May 24, 1996, and Foreman seniority on May 3, 1999. Carrier assigned Claimant Brewer a Flagging Foreman seniority date of May 3, 1999. The claims seek to adjust the Claimants' Flagging Foreman seniority dates to May 25, 1971, and May 24, 1996, respectively.

The claim is based on Rule 2(e) which provides:

An employee qualifying for and establishing seniority in any rank in a sub-department, will thereby establish the same seniority date in other positions in the same rank and in positions in all lower ranks in the same sub-department in which he has not already established seniority; provided that (except in the rank of laborer) such employee will not be shown as having seniority on such other positions until he is qualified on such other positions or classifications.

The Organization contends that, because Flagging Foreman is rank A-2, as are Assistant Foreman and Track Repairman, Claimants' seniority dates for the other rank A-2 positions should control their Flagging Foreman seniority dates. At issue in this dispute is the effect on Rule 2(e) of the Agreement of July 11, 1985, creating the rank of Flagging Foreman, effective August 1, 1985. That Agreement provided, in relevant part:

4. Employees who presently hold seniority in the A-1 and B-1 ranks shall as of the effective date of this Agreement, establish that seniority date in the Flagging Foreman rank in accordance with Rule 2(e).
5. Flagging Foreman seniority is for bidding purposes only in that rank and shall not serve to establish seniority in any other rank.

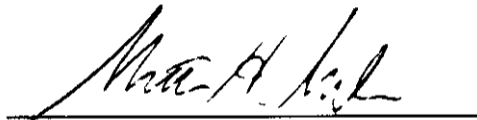
The July 11, 1985 Agreement was clarified in a letter agreement of September 12, 1986, which provided, in relevant part:

While it was not spelled out in the Flagging Foreman Agreement, this confirms the understanding that employees promoted to the A-1 and B-1 ranks will establish a flagging foreman seniority date under the provisions of Rule 2(e) of the Schedule Agreement when so promoted; as set forth in Rule 2(e), the employee will not be shown as having seniority until he is qualified on that position.

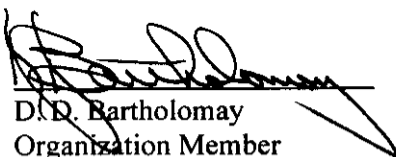
The Organization asserts that Section 4 of the Flagging Foreman Agreement was intended merely to staff the new position quickly and was not intended to affect Rule 2(e). Carrier, however, asserts that prior to the 1985 Flagging Foreman Agreement, flagging for contractors was performed by Foreman. Consequently, Carrier asserts that only Foreman establishing A-1 or B-1 seniority may use those seniority dates for the A-2 Flagging Foreman seniority roster. In Carrier's view, this is made clear in the September 12, 1986, letter agreement.

Although the parties certainly could have expressed their intent more precisely, we find that the record supports Carrier's position. If Rule 2(e) had been intended to apply generally to the Flagging Foreman rank, there would have been no need to specify that employees promoted to A-1 and B-1 Foreman ranks would establish seniority in the A-2 and B-2 Flagging Foreman ranks. Because A-2 and B-2 are lower ranks, by operation of Rule 2(e), employees promoted to the A-1 or B-1 ranks would have established Flagging Foreman seniority without any further specification.

Section 5 of the Flagging Foreman Agreement further reflects an intent that the A-2 Flagging Foreman rank not be governed by Rule 2(e), except where specified. Section 5 makes clear that Flagging Foreman seniority is sui generis and does not establish seniority in any other rank, a result inconsistent with application of Section 2(e). Consequently, it appears that the parties intended that seniority in the A-2 Flagging Foreman rank could be established by establishing seniority in the rank itself or by establishing seniority in the A-1 Foreman rank, but not by establishing seniority in another A-2 rank. The Organization has not proven otherwise. Therefore, the claims are denied.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 16, 2002