

SPECIAL BOARD OF ADJUSTMENT NO. 1063

Award No. 195

Case No. 195

BLE File CW-E-1-58-2

NS File TN-5

Parties        Brotherhood of Locomotive Engineers  
to               and  
Dispute       Norfolk Southern Railway Company  
                 (Norfolk & Western Railway Company)

Statement     Claim of Lake Division Engineer D. J. McCartney for proper placement on  
of Claim:       the Engineer's Seniority Roster. Article 21, Schedule Agreements,  
                 Columbus, Cincinnati and Kenova.

Findings:       The Board has jurisdiction of this case by reason of the parties  
                 Agreement establishing this Board therefor.

                 This claim involves the status of an engineer's seniority status and  
                 which Agreement governs the resolution thereof.

                 The Carrier points out that the Claimant was a transferee from one  
seniority district where the Claimant had held seniority as an Engineer as  
well as that of Trainman, to the old Scioto Division, another and separate  
seniority district. There the Claimant established a trainman's seniority  
date of June 29, 1992.

                 The Claimant as a qualified engineer was given an engineer's  
seniority date of August 24, 1992 consistent with the following Carrier  
bulletin reading:

                 "ALL TRAIN AND ENGINEMEN AND ALL CONCERNED-LAKE  
DIVISION

Trainmen J. Martin, G. D. Porter, M. A. Brockner, D. J. McCartney and J.  
Adams will be considered as entering LET on August 24, 1992, and  
establish seniority on their respective seniority districts in engine service on  
that date. They will establish a seniority date in engine service for those  
senior trainmen who have written request on file with the superintendent's  
office on or before September 15, 1992, meets the criteria of the LET

Policy and attends LET at the first available opportunity. Upon successful completion of the LET program, the senior trainmen order will be ranked in their relative seniority as engineers ahead of the transferred employees."

Train service employees under the above quoted bulletin who at the time the Claimant was employed as an Engineer and who had not yet attended locomotive engineer's training (LET) are placed ahead of him on the engineer's roster and as newly promoted engineers are added to the roster they are also placed ahead or above the Claimant.

This is not a first blush issue. Recent seminal Awards 1 and 2 of Public Law Board No. 3950 (Seidenberg) followed by Award 1 of Public Law Board No. 4881 (Zumas), Award No. 24375 of National Railroad Adjustment Board (Twomey) No. 5 of Public Law Board No. 4995 (Quinn) recognized, clarified, if not established, the appropriate Schedule Agreement to be made applicable when and after an employee acquires engineer's seniority. Dr. Seidenberg, in part, held:

"1. The UTU Training Agreements do not apply to 'already qualified bona fide engineers, either hired from other properties, or transferred from other zones...'

2. Carrier may hire bona fide engineers from outside the property. The UTU Training Agreement is not 'the sole and exclusive source for engineers...'

3. Carrier's 'right to hire outside engineers...is not nullified when the Carrier places a qualified hired engineer in a class room program to learn the Carrier's Book of Rules, Signal System, or the topography of the Road.'

4. Once an employee reached the threshold of the craft, and wishes to pass over into the craft of engineer, it is then the BLE Agreement that determines how this employee will be ranked as an engineer. In short, the ranking of engineers on the engineers seniority roster was properly a matter to be determined by the BLE and not by the UTU Agreements, because it is the craft that prescribes the seniority ranking of engineers."

Referee Twomey reaffirmed the correctness of the above mentioned Awards in a case progressed by the United Transportation Union. Award 24375 in pertinent part reads:

"...We agree with the position expressed in Awards 1 and 2 of PLB 3950 that once an employee reached the threshold of the craft -- through meeting the requirements of the UTU Training Agreement -- and wishes to pass into the craft of engineer, it is the BLE Agreement that determines how this employee will be ranked as an engineer. We find that the seniority ranking of qualified engineers hired from outside the company is controlled by the BLE Agreement; and we find that they were appropriately assigned a seniority date as of Schedule Rule 34 (j). Moreover, the seniority standing on the Engineer Seniority Roster of these hired engineers in relation to employees trained as engineers under the Engineer Training Program is a matter properly resolved under the BLE Schedule Agreement.

We find that the carrier did not violate any UTU Agreements when it rearranged seniority dates and seniority rosters of certain engineers trained and hired under UTU Agreements, subsequent to June 19, 1988. We find that the Carrier did not err in assigning seniority dates pursuant to the BLE Agreement provisions."

"As soon as a fireman is promoted, he will be notified in writing by the proper official of the company of the date of his promotion, and unless he files a written protest within sixty (60) days against such date he cannot thereafter have it changed. When the date of promotion of a fireman or the date of a hired engineer or fireman has been established in accordance with regulations such dates shall be posted and if not challenged in writing within sixty (60) days after such posting, no protest against such date shall afterwards be heard."

Here, the problem appears to flow from an application given the UTU's National "Manning and Training Agreement," without regard for the Engineer's Agreement. However, as pointed out above, many adjudicatory boards have held that the BLE Agreement govern and determine an engineer's placement on the Engineer's Seniority Roster upon entering that craft. The Carrier and the UTU believed that the arrangement in which an engineer's seniority should apply should be that an engineer's seniority standing should be predicated on his train service standing. The UTU agreement allows an engineer trainee to enter LET in trainman seniority order but candidates therefor who do not initially exercise that opportunity and decide later are then placed in engineer standing, according to the UTU, by their relative standing in train service.

This conclusion conflicts with the BLE Schedule Agreements which governs engineer's seniority. The Board finds that the Carrier's action is in violation of BLE Agreement Article 21A (C) reading:

"If for any reason the senior eligible fireman or engineer to be hired is not available and junior qualified fireman is promoted and used in actual service out of his turn, whatever standing the junior fireman is so used establishes goes to the credit of the senior eligible fireman or engineer to be hired provided the engineer to be hired is available and qualifies within thirty days. As soon as a senior fireman or engineer to be hired is available, ...as provided in a hearing, he shall displace the junior fireman, who shall drop back into whatever place he would have held had the senior fireman to be promoted or engineer to be hired been available and a junior fireman not used. NOTE: Qualification as referred to herein is not intended to include learning of road or signals."

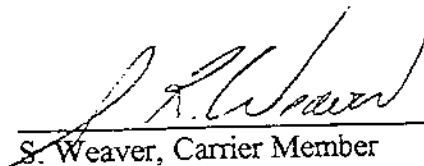
This is not novel or a first blush issue. This Board has found to the contrary of the Carrier's position in the past. Keystone awards on this subject were Awards No. 1 and 2 of PLB 3950 (Jacob Seidenberg). They were followed by PLB 4881 (Zumas), PLB 4995 (Quinn) and NRAB Award 24375 Referee David Twomey. Our Board is impelled to hold that the agreement rule cited by the BLE is clear and controlling. There is no rule or agreement cited by the Carrier which serves to override the language therein. Simply stated when promoted to an engineer on his new district the Claimant should have established engineer seniority over those senior ground service employees who had not yet been promoted or sent to Locomotive Engineer Training (LET) but behind those who already attended LET and acquired an engineer's seniority date. Carrier is directed to address the Claimant's seniority accordingly. This award has precedential value only where a Claimant timely and properly appealed his seniority standing under the BLE Agreement.

Award: Claim sustained.

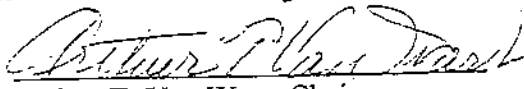
Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



P. Sorrow, Employee Member



S. Weaver, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member