

PUBLIC LAW BOARD NO. 5902

**PARTIES) UNITED TRANSPORTATION UNION YARDMASTER DEPT.
TO)
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim and request that Yardmaster Julian Ramsue be removed from Yardmaster position YO 107 at Andrews Yard, Columbia, SC; and that his seniority be terminated. (Carrier File: UM-PL-97-1)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

This dispute concerns the application of Rule 9(A) and whether an employee who elects to **voluntarily** leave a position as Yardmaster to enter the locomotive engineer training program thereby forfeits seniority as a Yardmaster. Rule 9(A) reads:

Yardmasters, Assistant Yardmasters and Extra Yardmasters engaged in other business or employment will not be granted a leave of absence in excess of ninety (90) days and retain their seniority rights unless mutually agreed to in writing by the proper officer of the Company and the General Chairman, Railroad Yardmasters of America.

It is evident that the employee here named, Mr. Julian Ramsue, was put on notice that the Yardmasters Organization did not find it appropriate that a leave of absence be extended for the purpose of permitting an individual to voluntarily enter the locomotive engineer training program. In this respect, Mr. Ramsue was notified as follows by a letter dated September 9, 1996 from the General Chairman:

This is a follow-up of our conversation to state my original remarks to you in regards to Engineer Training. If you choose on your own to go to Engineer School and the Carrier has not requested you to go you will have to forfeit your seniority as a Yardmaster.

I want you to fully understand the situation as we discussed in our conversation.

Mr. Ramsue did not formally dispute the above notification. Nor did Mr. Ramsue apparently heed or take notice of the advice and counsel of the General Chairman. Instead, Mr. Ramsue elected to stop working as a Yardmaster on October 7, 1996 so as to enter the engineer training program.

It is thus evident that by his actions Mr. Ramsue sought to circumvent the clearly stated provisions of Rule 9(A) so as to engage in other employment, i.e., that of a locomotive engineer trainee, while, at the same time, attempting to retain his seniority standing as a Yardmaster.

The Board finds merit in argument advanced by the Yardmasters that the matter of acquiring and retaining seniority is covered by the collective bargaining agreement and that the contractual rights and privileges of the individual employee must be viewed in the context of the rules as they affect all individuals on the seniority roster.

In making this determination we are guided by the principles espoused in many past awards, and more especially in Award No. 15510 of the First Division, NRAB, Referee A. Langley Coffey, where, in part here pertinent, it was stated:


Although frequently spoken of as a property right in which the individual employe has a vested interest, seniority is something which all employes enjoy in common. At most it is community property. Therefore the organization, for the protection of all employes and not so much in the interest of any one employe, insists on being heard by the carrier on the matter of administrative seniority. It is not uncommon for it to step in as was done in the instant case and assert what it considers to be the proper application of a rule in the community interest against the individual's asserted right.

Accordingly, the Board finds that unlike situations where Yardmasters are **forced** into locomotive engineer training based upon their seniority under applicable UTU agreements, and do not thereby forfeit their Yardmaster seniority, that it would not be fair to employees who continue to work as Yardmasters to permit an individual employee who **voluntarily** engages in other employment to retain their seniority so as to be able to return to Yardmaster work at some future date.

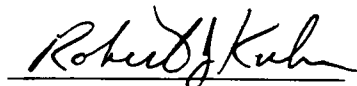
Under the circumstances, it is the finding of the Board that an affirmative award is justified. The Carrier is therefore directed to remove the Claimant's name from the applicable Yardmaster seniority rosters.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Robert J. Kuhn
Carrier Member
Norfolk, VA



Robert C. Arthur
Organization Member

September 11, 1997