

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers  
(National Railroad Passenger Corporation (Amtrak))

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) unjustly terminated New York, N.Y. Radio Maintainer Robert P. Donnelly from service effective May 1, 1984.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Radio Maintainer Robert P. Donnelly to service with seniority unimpaired and with all pay due him the first day he was held out of service until the day he is returned to service, at the applicable Radio Maintainer's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreement for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was first employed by the Carrier as a Signalman Helper on August 26, 1983 in the Communication and Signal Department. This position is covered by an Agreement between the Carrier and the Brotherhood of Railroad Signalmen. On February 13, 1984, the Claimant assumed the duties of a Radio Maintainer's position which is covered by an Agreement between the Carrier and the International Brotherhood of Electrical Workers.

On April 25, 1984, the Carrier advised the Claimant that pursuant to Rule 3(a) of the IBEW Agreement, his application for employment as a Radio Maintainer had been disapproved due to weak basic job knowledge.

The central issue before this Board is whether or not the Carrier violated Rule 3(a) of the IBEW Agreement which gives the Carrier the right to disapprove the application of a "newly-hired" employee within 90 calendar days.

Based upon a complete and thorough review of the record, the Board discerns it is confronted with a stark conflict in facts asserted by the parties at interest relative to the substantive issue of whether or not Claimant relinquished his seniority as a Signaller Helper and concurrently made application for employment as a Radio Maintainer.

On the property the Organization asserted that Claimant simply transferred from one C&S department to another C&S department. The Carrier asserted that an unidentified individual made it clear to the Claimant upon his acceptance of the Radio Maintainer position that he forfeited his seniority as a Signaller Helper. Claimant asserted he had not been so informed.

On this basic and central point, the Board finds the record to be devoid of sufficient evidence upon which to make a determination, as the parties have merely repeated their assertions made on the property rather than placing before us some substantiation of their positions and arguments.

In other words, the Carrier failed to submit as evidence signed copies of Claimant's resignation as a Signaller Helper and his application for employment as a Radio Maintainer. Likewise, there is no signed statement from the Claimant attesting to his lack of such knowledge or understanding relative to his acceptance of the new position under a different Agreement and the attendant ramifications.

This Board is charged with resolving conflicts related to the application and interpretation of Agreements based on facts presented on the property and not with determining facts. This is a classic example of why it is so important to "talk with the pencil."

In an effort to compromise the dispute on the property, the Carrier offered to put the Claimant back to work as a Signaller Helper. In the Board's view, it was unwise for the Claimant to reject the Carrier's offer out of hand, given these peculiar facts and circumstances.

Faced with these conflicting and largely unproven contentions, we conclude that Claimant is entitled to reinstatement to service as a Radio Maintainer with seniority unimpaired, but without compensation for time lost. Any questions as to whether or not Claimant is qualified to work as a Radio Maintainer can be handled in accordance with the terms of the Agreement at the time he exercises his seniority onto a particular position.

Form 1  
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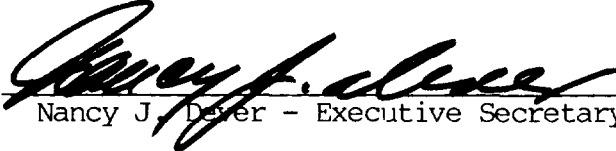
Award No. 11073  
Docket No. 11072  
2-NRPC-EW-'86

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1986.