

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13119
Docket No. 13031
97-2-95-2-58**

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
**(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)**

STATEMENT OF CLAIM:

- "1. That, in violation of the current agreement, CSXT (former Chesapeake & Ohio Railroad Company arbitrarily and unjustly removed Machinist C. N. Dunkle's name from the Roadway Mechanic Seniority Roster. His name was removed in March 1994.**
- 2. That, accordingly, CSXT be ordered to reinstate Machinist Dunkle's name to the seniority roster."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 significant elements relevant to this claim began on March 1, 1993 when the Organization and the Carrier entered into an Agreement (the "March Agreement")

which provided, in pertinent part, for a system-wide transfer and coordination of Engineering Department equipment repair work. This resulted in the movement of 116 "shop" positions from four locations to the Carrier's Bryan Park Facility at Richmond, Virginia. The March Agreement also established 158 "field" positions. The total of 274 Mechanics' positions (shop and field) were placed on a single consolidated seniority roster known as the Consolidated Roadway Mechanics Seniority Roster ("CRMS").

The Claimant at the time of the March Agreement had insufficient seniority to obtain a field position. Nor did he have sufficient seniority to obtain a separation payment. However, he did have a choice of either accepting a shop position at Richmond or of entering a furlough status without protective benefits. The Claimant, effective March 1, 1993, accepted assignment to the Richmond facility.

Prior to the above-cited events, a claim involving a number of Claimants was filed by the Organization on March 21, 1991. Therein the Organization asserted that the Carrier had abandoned its Barboursville, West Virginia, facility. Given the subsequent events and other circumstances, the Carrier, on August 24, 1993, submitted an offer to settle the March 1991 dispute.

The August 1993 Settlement Offer contained four settlement options applicable to certain categories of the Carrier's workforce. All affected employees were required to select one of the options before it was activated.

Option 2 in total reads as follows:

"Individuals working as a mechanic in Richmond, Virginia:

- a. A separation from the Carrier of \$46,000 subject to all applicable withholding amounts and taxes, or;
- b. A payment of \$10,000, retaining seniority rights in the Barboursville Shop, or;
- c. September 25, 1964 protection of sixty (60) percent per month of your test period average (TPA) starting with a date to be agreed upon following acceptance of this offer and continuing for a period not to exceed five (5)

years from the date of your furlough. Any other railroad earnings will count against this payment, or;

d. Remain furloughed.”

The Claimant, on September 29, 1993, indicated his selection of Option 2c. The letter that transmitted the option offer to the Claimant also contained the following statement.

“The offer was further conditioned on the premise that all of the Claimants (with the exception of R. Lawhon, who is out of service), would have to agree to one of the offers made in the settlement; or the parties would proceed to arbitration on the merits of the case.”

By letter, dated March 25, 1994, the Claimant filed a “formal protest” with his General Chairman in which he requested to have his name “returned to the 1994 Roadway Mechanics Seniority Roster.”

The Claimant asserted that there were two seniority rosters at the Richmond facility, one for Shop Mechanics and one for Field Mechanics. He claimed to be on the Field Mechanic or Roadway Mechanics Seniority Roster.

On June 2, 1994, the claim was denied by the Carrier. It essentially observed that:

1. Pursuant to the March Agreement, there was only one seniority roster established. The CRMS had been mailed to the Organization on January 26, 1994.
2. Because the Claimant accepted Option 2c to draw a dismissal allowance, which he had been receiving, his name was properly removed from the CRMS.

Subsequently, on July 2, 1994, the Organization appealed the Carrier's decision. It contended that Option 2c did not require the Claimant to relinquish his seniority. It further claimed that only under Option 2a (a complete separation from the Carrier) would a loss of seniority occur.

On August 30, 1994, the Carrier again rejected the claim, essentially restating the same reasons as in its previous denial. Following a further exchange of correspondence on the property, the claim was advanced to this Board for final adjudication. Following careful review, we conclude that the claim must be denied.

The Organization's basic argument on the property was stated as follows in its July 2, 1994 letter to the Carrier: "The only provision where a mechanic working in Richmond would have to give up any seniority is under provision 2a, a complete separation from the Carrier." However, no analysis to support this assertion was provided on the property, nor was there any provision of the controlling Agreement cited that had been allegedly breached by the Carrier to support its position on the property.

The Carrier's position is given considerable substance on the basis of the actions or the lack thereof of the Claimant and the Organization on the property. The Claimant signed the Settlement Agreement and selected Option 2c on September 29, 1993. He worked his assignment into October 1993 when he began to draw a dismissal allowance by his return to Barboursville, West Virginia. It was not until March 25, 1994 that he filed his initial claim, approximately five months later.

The Claimant is not a newcomer to the workforce. If he believed that he was still on the Roadway Mechanics Seniority Roster, why did he not make inquiry earlier with respect to availability of positions? Additionally, the revised CRMS was issued on January 25, 1994. It did not include the Claimant's name. No one, as far as the record before the Board shows, questioned the absence of the Claimant's name from the Roster. The Board concludes that had there been any question about the construction of Option 2c, the absence of the Claimant's name on the CRMS would have raised, at the least, a question as to why he was not listed. Accordingly, the Claimant's actions prior to his claim are not consistent with the actions of a person who did not understand what he signed on September 29, 1993.

Last, none of the substantive arguments advanced by the Carrier on the property were refuted on the property. Therefore, they stand as accepted fact.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 6th day of May 1997.