

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13332

Docket No. 13175

98-2-96-2-79

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

(Lemuel R. Andrews

PARTIES TO DISPUTE: ((CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad)**STATEMENT OF CLAIM:**

“Mr. L. R. Andrews was employed by CSX Transportation Inc. for 39 nine years, most recently at its Tampa Operation as a sheet metal worker. On September 3, 1990, CSX moved all its engines to Waycross, Georgia. At that time, Mr. Andrews exercised his rights as a person ‘deprived of employment’ under the New York Dock Labor conditions, imposed by the ICC (dealing with mergers and consolidations of export carriers within its jurisdiction) to stay in Tampa and receive compensation rather than change his residence. CSX declined to offer him any position on its skeleton crew remaining in Tampa. Mr. Andrews is also covered by the Orange Book Agreement which is lifetime protection which operates as an extension of the New York Dock. (Both Agreements are attached.)

On July 11, 1995, Andrews was advised that there was a sheet metal workers’ position available in Atlanta, Georgia. Pursuant to Appendix III (New York Dock Agreement) of the Implementing Agreement between CSX Transportation, Inc. and its Employees Represented by the Sheet Metal Workers’ International Association (Agreement No. 9-062-90, Item 5.(b), Mr. Andrews is a displaced employee entitled to refrain from exercising his seniority rights because the available position requires a change in his place of residence. See In the Matter of Arbitration between International Association of Machinists and Aerospace Workers (District 22) and Guilford Transp. Indus., Case No. 6, February, 1986. CSX improperly suspended Mr. Andrews’ dismissal allowance notwithstanding the provisions of this paragraph. Mr. Andrews maintains that he

continues 'deprived' of employment because until he was suspended he had the capacity and/or willingness to work, and has not refused work or been physically unable to perform service. He simply declined to exercise seniority where a change of residence was required.

After a period during which Mr. Andrews attempted to rectify this situation, he was forced to retire on September 1, 1995, in order to reinstate some level of income and benefits.

In addition, Mr. Andrews engaged in compensated service for greater than 120 days in 1990, making him eligible for five weeks vacation prior to his becoming a displaced worker in 1990. He has never received compensation for this unused vacation from 1990. His entitlement to this compensation is not dependent upon his rendering compensated service in 1994.

Also, protective status and compensation under the New York Dock did not become effective until two months after Mr. Andrews was displaced in 1990. He has never received one month's outstanding salary for this period. This money is also due to Mr. Andrews.

Mr. Andrews seeks an order reinstating him to protective status at full compensation and rescinding his retirement, together with backpay and equivalent pay for lost benefits; or, in the alternative, backpay and lost benefits as would have been available under the New York Dock Agreement, together with front pay and equivalent benefits for his lifetime in conjunction with his retirement under the Orange Book, together with the costs and expenses of this action and reimbursement for any other losses he has incurred, and any other relief that may be available to him in this action."

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 controlling facts in this case are not in dispute. The record shows that the Claimant, a Sheet Metal Worker, was afforded a dismissal allowance under New York Dock as a result of being deprived of employment with the Carrier in September 1990.

Approximately five years later, in July 1995, the Claimant was advised by telephone and subsequently by letter confirming the telephone conversation that there was a job available for him in his craft at Atlanta, Georgia. The Claimant accepted the position and was given a return-to-duty physical examination.

But, the Claimant did not report for duty, even after further attempts were made by the Carrier to consummate his return to work. Because of the Claimant's failure to report for work, the Carrier terminated his New York Dock labor protection. This action, on the part of the Carrier, resulted in strong protest by the Organization and continued denials by the Carrier.

The Carrier's basic argument, relying on numerous past arbitral Awards, was that a dismissed employee who is receiving benefits under New York Dock and who is offered employment in his craft ceases to be protected if he fails to accept work when it is offered by the Carrier.

In September 1995, the Claimant resigned and was awarded a Railroad Retirement Annuity. By letter dated August 8, 1996, the Organization advised the Carrier that, without prejudice to its position, it was withdrawing its New York Dock claim in view of the Claimant's retirement.

The Board agrees with the action taken by the Organization because the Claimant is now retired. However, as settled numerous times in this industry, this Board does not have jurisdiction to interpret New York Dock conditions. The Claimant requests

benefits that arose because of an Interstate Commerce Commission approved transaction, which then imposed the provisions of New York Dock. Accordingly, any dispute must be handled in accordance with the dispute resolution procedure set forth in New York Dock.

AWARD

Claim dismissed.

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 8th day of October 1998.