

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13794

Docket No. 13607

03-2-01-2-9

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

(Stephen N. Pirillo

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

"This grievance is for and against the International Association of Machinist and Aerospace Workers for treating me as a new hire employee, effectively extinguishing my seniority, instead of a transferring NJT Rail employee.

I am seeking reinstatement to my position of rail machinist, exonerated of all charges against me, together with the payment of all lost back salary and employment benefits."

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.

This claim is a companion to the claim heard by the Third Division and decided at Award 36954.

The Claimant was employed by the New Jersey Transit Bus Operations on January 26, 1998, as a Cleaner/Service employee. On August 19, 1998, he requested and was granted a transfer into the New Jersey Transit Rail Operations as a Repairman. At this time, the Claimant indicates he was told that the rail operations was a separate entity despite being under the umbrella of New Jersey Transit. He also understood that he would be subject to a probationary period under the jurisdiction of BMWE.

In October 2000, the Claimant transferred of his own volition a second time to a position as a Machinist under the jurisdiction of the IAM. By letter dated October 16, 2000, he was advised:

"Your hourly rate will be \$15.69 per hour, which is 80% of the full rate for the Machinist B position. Your probationary period is 120 days and you will have to start over again regarding your seniority with International Association of Machinists."

The Claimant accepted the position. Prior to completing his probationary status, he was dismissed by letter dated June 30, 2001. The letter stated in part:

"On January 29, 2001, while changing a turbo charger on Locomotive 4142, it was observed that you demonstrated a lack of mechanical ability to perform your job and you also lack the necessary work ethic required to be employed as a Machinist for New Jersey Transit. As of this notification you are hereby terminated."

The Claimant insists he is not a new hire and should have been provided greater assistance from the Organization in reversing his discharge. He claims that after his dismissal the IAM refused to file a claim or assist him in the filing of an appeal.

The Claimant explains that he is not a new hire. He further supports his position by pointing out that when he transferred the first time he was given new hire papers. However, when he transferred the second time, he did not receive a new hire package. Moreover, he contends, his benefits package remained the same and he was given the top rate of pay. He insists the contract only provides a probationary period for new hires and contains nothing regarding lateral transfers within the Rail Division.

In addition, the Claimant contends that he agreed to have BMW dues taken out of his paycheck, thus, he was still an active member of BMW and eligible for representation.

The Carrier argues this case concerns an employee under the auspices of the Brotherhood of Maintenance of Way (BMW) Collective Bargaining Agreement. The Carrier contends they were in full compliance with the Agreements when they dismissed the Claimant. They point out that the Claimant voluntarily forfeited seniority in that craft by transferring to another craft, namely the International Association of Machinists. They say the Claimant had his application disapproved while in his probationary period because of unsatisfactory work performance.

The Carrier asserts the Claimant forfeited his seniority within the BMW Craft and his disapproval under the IAM agreement was in compliance with the governing Rules. In addition, they contend this case is a duplication of Award 36954 currently listed for adjudication before the Third Division of the NRAB.

They say the claim should be denied in any case, since it was never addressed on the property. They cite First and Second Division Awards in support of their position.

The Carrier goes on to cite provisions of the BMW and IAM Agreements dealing with the forfeiture of Seniority and the Probationary Period.

Rule 8 of the BMW Agreement states:

“Except as provided in Rule 4, Section 4, an active employee who accepts a position coming within the scope of any other agreement

for more than fifteen (15) days, without having his seniority protected by an agreement between the Agency's designated official and General Chairman, will forfeit all seniority under this agreement."

Rule 1 of the Machinists' Agreement provides:

"The application of new employees for employment shall be approved or disapproved within 120 days after applicants begin work. . . ."

The Carrier references Special Board of Adjustment No. 964, Award 126 which held that the service requirement is service within the craft.

Finally, the Carrier argues the Board has no jurisdiction to address any dispute other than that between employee and Carrier. They maintain this dispute is between the Claimant and the union.

The Board finds no evidence that the Carrier was in any violation of the Rules and provisions of either Agreement. The Claimant was unable to cite or demonstrate any violation of any of the Rules contained in the Collective Bargaining Agreement. Moreover, we must concur with the Carrier that this matter was not "handled in the usual" manner on Carrier property. Therefore, as we ruled in the companion case before the Third Division, the Board has no jurisdiction over any matter that was not processed through the on-property appeals procedure.

Beyond that, the Board agrees that this case is an employee complaint against his Union. We have no authority or jurisdiction to resolve a dispute between an individual employee and his Organization. In Award 36954, the Board cited Third Division Award 32391 in support of this contention.

AWARD

Claim denied.

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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 27th day of April 2004.