

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26074
Docket Number MS-26099

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Sherman E. Sunderland
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission covering an unadjusted dispute between me and the Consolidated Rail Corporation involving the question:

Whether I was improperly denied my seniority and furloughed from my position with Conrail as of March 19, 1984."

OPINION OF BOARD: The record before this Board initiated by the Claimant disputes Carrier action by letter of March 23, 1984, which informed Claimant of a change in seniority date and consequent furlough.

The record indicates that Claimant began as an Agreement Employee and accepted promotion to a Non-Agreement position of Engineer-Track with Conrail. By letter of April 12, 1977, Claimant resigned his position with Conrail effective April 29, 1977. That point is not in dispute. Claimant resigned to accept a position with Amtrak from which he was released due to reorganization effective October 26, 1981. Subsequently, Claimant returned to Conrail, foregoing other possible opportunities, and was permitted to exercise seniority until challenged on January 17, 1984. Thereafter, Claimant was notified:

"that your exercise of seniority on November 16, 1981 was improper. You had no seniority standing with the company effective upon your resignation..."

A careful review of the issues involved and Contractual Language of the Agreement indicate that the resignation was controlling. Seniority is a Contractual Agreement between the Organization and the Carrier. The Board finds nothing in the record that developed on property to substantiate Agreement contravention by the Carrier. In fact, both the Organization and Carrier agree with the action taken and thereby the instant dispute involves the validity of the Agreement and not its Interpretation and meaning. The jurisdiction of the National Railroad Adjustment Board is centered explicitly on the Interpretation of contracts when in dispute between the parties thereto. Claimant's dissatisfaction over the exercise of Agreement rights does not give

this Board jurisdiction over such disputes. As this dispute does not involve "the interpretation or application of agreements," but the validity of an Agreement which is not in dispute between the parties, this Board by long established precedent must dismiss the Claim (see Third Division Awards 21853, 21926, 25617).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;


That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Pover - Executive Secretary

Dated at Chicago, Illinois this 8th day of July 1986.