

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of J. W. Ferneding, for the difference in what he earned and what he could have earned, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rules 2-B-1 and 2-C-1, when it refused to allow him to exercise his seniority on Seniority District No. 23." Carrier file SG-119. BRS file 7931-CR.

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

Following five years of disability, Claimant was released by his physician and approved for return to service on February 24, 1989. Prior to his disability he had worked in Seniority District No. 20, Cincinnati, Ohio, for his entire career with the railroad, commencing September 13, 1976. It is proven beyond dispute on this record that Claimant never held seniority in Seniority District No. 23, which embraced the Columbus Shop.

On April 6, 1989, notwithstanding his lack of seniority in Seniority District No. 23, Claimant attempted to displace a junior employee in the Columbus Shop, citing Rule 2-B-1. Carrier disallowed that request, as well as another attempt to bump into the Columbus Shop by Claimant on April 10, 1989. Thereafter, he displaced a junior employee in Seniority District No. 20, where he had established and retained his original seniority, and returned to service.

Claimant alleges a violation of Rules 2-B-1 and 2-C-1 and seeks to recover the monetary difference between his actual earnings in District No. 20 and what he would have earned if allowed to displace into District No. 23. The Agreement Rules that govern that issue read as follows:

"2-B-1. After absence due to leave of absence, jury duty, vacation, sickness, disability, suspension or other cause, an employee must return to his former position, if not abolished or filled by a senior employee in the exercise of seniority, and/or within ten (10) calendar days, exercise seniority (including right to promotion) to any position advertised during his absence. An employee failing to obtain a position not requiring a change of residence shall forfeit all seniority. If, during his absence, his regular position has been abolished or filled by a senior employee in the exercise of seniority, he shall exercise seniority in accordance with Rule 2-C-1."

2-C-1. (a) Displacement rights may be exercised by an employee:

1. when his position is abolished;
2. when displaced by a senior employee;
3. when returning from a leave of absence, sickness, disability, special duty, or suspension and his former position has been abolished or filled by a senior employee in the exercise of seniority; or
4. when an employee is removed from a position under Rule 2-D-1 and his former position has been abolished or awarded to a senior employee.
5. when an employee is removed under Rule 3-E-1.

(b) An employee whose position has been abolished or who has been displaced by a senior employee or who is entitled to exercise seniority under Rule 2-A-4 shall have the right to displace within ten (10) calendar days in any seniority class in which he holds seniority. An employee who fails to exercise seniority to a position not requiring a change of residence shall forfeit all seniority."

Neither of the above-quoted Rules, nor the Columbus Shop Agreement, provides any basis of support for this claim. Claimant's involuntary absence during the establishment of positions in District No. 23 is immaterial to his claim of entitlement to retroactive seniority in that district. Seniority never was established or created by Claimant in Seniority No. 23, so it begs the question to argue that he was entitled to "restoration" of seniority in Columbus Shop. There simply is no support in fact, law, or contract for his present contention that seniority be granted retroactively, "restored" or exercised in a seniority district where it never existed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devereaux - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.