

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29786
Docket No. CL-30439
93-3-92-3-182

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

(Transporation Communications International
(Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Union (GL-10687) that:

- (1) The Carrier acted in an arbitrary, capricious and unjust manner and in violation of the current Clerical Agreement, and the Letter of Agreement dated December 3, 1986, when it failed to allow Clerk James Cyplik to return to the service of the Carrier.
- (2) The Carrier shall now be immediately required to allow Clerk James Cyplik to exercise displacement rights as provide for in the Agreement.
- (3) The Carrier shall be required to compensate Clerk James Cyplik for eight (8) hours (1 day) at the pro rata rate beginning October 1, 1991, and continuing thereafter five (5) days each workweek."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimant was first employed by Carrier on August 14, 1972, as a Clerk. He was subsequently promoted to a Dispatcher, a position under the scope of another Agreement, but he retained his seniority as a Clerk pursuant to Rule 20 of the Agreement.

On July 28, 1986, Carrier agreed to sell a portion of its line to the Chicago, Missouri & Western Railway Company (CM&W). The CM&W agreed to hire 625 of Carrier's employees, including Clerks and Dispatchers. On December 3, 1986, prior to the closing of the sale to the CM&W, Carrier and the Organization entered into what they characterize as a "fallback agreement," which reads, in pertinent part, as follows:

"ICG clerical employees who resign to accept employment with CM&W Railway will, for a period of five (5) years following the effective date of this agreement, be permitted to return to the ICG with full restoration of seniority and benefits in the event they are unable to hold a position for a period of 60 days with CM&W Railway. An employee who returns to the ICG under this provision must exercise seniority under the provisions of Rule 14 of the ICG Rules Agreement."

When the sale was consummated, on April 28, 1987, the CM&W accepted employment applications from Carrier's employees who agreed to resign from Carrier's service. On April 27, 1987, Claimant, at the same time he accepted employment with CM&W, signed a resignation from the Carrier, agreeing to the following terms:

"...I hereby agree to:

(i) resign from the service of ICG effective upon my employment with CM&W and the conveyance to CM&W of the rail lines mentioned above.

(ii) subject to the conditions noted herein above in the last preceding paragraph (i), release and forever discharge ICG from any and all claims, demands, grievances, and causes of action of any nature, kind, character, or description, either at common law or under any state or federal statute, existing on or occurring after the effective date of this resignation, and arising under the Railway Labor Act, any collective bargaining agreement, or under any labor protective conditions now existing or hereafter imposed,

or for any personal injury while in the employment of ICG, except for such personal injury claim submitted to ICG prior to my employment with CM&W."

On April 28, 1987, Claimant gave a letter to Carrier's General Superintendent Transportation, reading as follows:

"Please accept my resignation from the service of the Illinois Central Gulf Railroad effective 12:25 P.M., April 28, 1987."

Claimant thereupon began service with the CM&W as a Train Dispatcher. The CM&W operated until it went into bankruptcy sometime toward the end of 1989, whereupon the line was divided and sold, creating two independent rail carriers, Gateway Western and the Southern Pacific, Chicago and St. Louis. Claimant, however, remained on a skeleton crew of four clerical employees at the CM&W. His position at the CM&W was abolished effective September 30, 1991, and he was thereafter unable to hold a position with the CM&W. Consequently, he sought to exercise his clerical seniority with the Carrier, but was denied because he had resigned from service. The Organization asserts Claimant has a right to return under the "fallback agreement."

The Organization first argues Claimant was required to sign the April 28, 1987 resignation under duress. Claimant has stated this second resignation was only required of dispatching employees. As he had already accepted a position with CM&W, Claimant says he felt he had no option but to sign the second resignation. We find this issue to be a red herring. There is nothing in the second resignation which was not already agreed to by Claimant in the April 27, 1987, resignation. Further, Claimant had the option to remain in Carrier's employ, and was not under duress in signing either of the resignations. Finally, Claimant's assertion regarding duress faded with the passage of time. Four and a half years after signing the resignation is too late to make such a claim.

The real issue in this case is whether or not the December 3, 1986 "fallback agreement" applies to Claimant. Carrier denies it intended to afford such protection to any employee who went to work for the CM&W, simply because he or she might have had clerical seniority. The record does not indicate how many other Organizations entered into similar agreements with Carrier, but it is evident the Organization representing Dispatchers on this property did not. Carrier notes that only 99 of the 625 employees who went to work for CM&W held clerical jobs at the time they transferred. Carrier argues against the expansion of coverage on

the basis it would not have been possible to foresee how many employees with clerical seniority would go to work for the CM&W.

To interpret the December 3, 1986 Agreement, we need only look at its language. By its terms, the right to return to the Carrier's employ is limited to "ICG clerical employees." We interpret this to mean only those holding clerical positions. Claimant, although holding clerical seniority, was not a clerical employee at the time of his resignation. He was a Dispatcher. As such, his right to the benefits of the clerical Agreement was limited. If the parties intended to extend this benefit to Claimant, and others holding seniority but not working in the class, it would have been necessary to specifically state the December 3, 1986 Agreement covered all those with clerical seniority. Failing to do so, we must conclude the parties intended to include only those working on clerical positions. As this does not include Claimant, he has no right to claim employment under the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sh
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.