

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30470
Docket No. MS-30309
94-3-91-3-733

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Dennis L. Stowe
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"The question in this case relates to Denis L. Stowe's entitlement to seniority under the March 4, 1980, Labor Protective Agreement entered into by a number of unions and railroads, including the Transportation Communications International Union and the Chicago Northwestern Transportation Company, and relating to the takeover of trackage of the former Chicago Rock Island and Pacific Railroad ("Rock Island"). Dennis L. Stowe requests that his status as a March 4, 1980, Agreement hiree be recognized and that he be given his Rock Island seniority date of October 5, 1968, as his C&NW clerk seniority date."

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.

The parties to the dispute were given due notice of hearing thereon.

The Claimant was employed by the former Chicago, Rock Island & Pacific Railroad (CRI&P) until its bankruptcy in 1979. On March 4, 1980, the Carrier, along with several other railroads, entered into an Agreement with a number of Organization, including the American Train Dispatchers Association (ATDA) and the Brotherhood of Railway, Airline and Steamship Clerks (BRAC, now TCU). This Agreement is known as the "Miami Accord." The Carrier became an

interim service operator and, on a temporary basis, hired a number of employees of the former Rock Island Railroad. The Claimant was hired as a Dispatcher and first performed service on February 16, 1981. Article II, Section 9(a) of the Miami Accord states:

"(a) In accordance the option selected under paragraph 8 of this Article, agreements will be reached on each purchasing carrier concerning the filling additional job assignments, between the purchasing carrier's employees and the bankrupt carrier's employee's hired by the purchasing carrier. In the absence of an agreement, in order to avoid delay in operations the purchasing carrier may, on a temporary basis, hire qualified and available bankrupt carrier employees to the extent needed where additional jobs are established at the outset. Such employees will be placed at the bottom of the current list of active employees, and they will remain in such status until an agreements is reached respecting seniority in accordance with the provisions of this paragraph."
(Emphasis added.)

The Carrier and the ATDA entered into an Implementing Agreement on January 16, 1986, in accordance with the above quoted Article II, Section 9(a). The Agreement provided the Claimant's seniority, as well as other CRI&P Dispatchers' seniority dates would be the date on which they first entered service with the Carrier. As indicated, the Claimant entered service on February 16, 1981.

Previously, the Clerks Organization and the Carrier had entered into a Memorandum of Agreement in accordance with Article II, Section 9 of the Miami Accord (August 1, 1980). This Agreement provided that Clerks subsequent to the date of agreement would have Clerk seniority as of the date they first performed service. As indicated, the Claimant was not hired as a Clerk under the March 4, 1980, Agreement. The record indicates the Claimant first worked as a Clerk on or about May 31, 1982. The Claimant has consistently asserted his Clerk's seniority on the C&NW should be his CRI&P Clerk seniority date, October 5, 1968.

On or about February 2, 1984, the Claimant was named as a plaintiff, along with other former CRI&P employees, in a suit filed in U.S. District Court for the Southern District of Iowa against the purchasing railroads. Beardsley v. Chicago Northwestern Transportation Co., 850 F. 2d 1255 (8th Cir. 1988). On September 14, 1988, the 8th Circuit Court of Appeals remanded the matter to the district court "...for action consistent with this option." On

January 19, 1990, Chief Judge Harold D. Vieter, Southern District of Iowa, issued the following order the respect to "new-hire plaintiffs."

"A. The new-hire plaintiffs have the right to have their claims submitted to arbitration in accordance with section 3 of the Railway Labor Act. The neutral arbitrator shall determine whether the jobs these plaintiffs received arose from the Rock Island acquisition and, if they did, what seniority rights are due these plaintiffs.

B. In resolving the seniority claims, the arbitrator must determine whether the claims of the new-hire plaintiffs are barred by the defense of laches. In deciding the laches issue, the arbitrator shall take into account the factors listed in section II(B) of this order."

The jurisdiction of the Board under Section 3, First of the Railway Labor Act, is limited to those disputes between an employee or a group of employees and a carrier or carriers growing out of grievances or out of interpretation of application of agreements concerning rates of pay, rules or working conditions, that have been handled in the usual manner up to and including the chief operating officer designated to handle such disputes.

Notwithstanding the above, the Claimant argues a serious question over the procedure to be followed is raised by Judge Vieter's order. The record establishes that following the January 19, 1990, District Court Order, the Claimant submitted a claim on or about March 21, 1990, demanding restoration of his CRI&P seniority. This claim is clearly eight years after the Claimant first established Clerk's seniority in 1982. The record convinces this Board that the Claimant was fully aware of the proper claims and appeals process under the Schedule Rules Agreement (see Carriers Exhibit N). Accordingly, his claim that there was no specific procedure to present this dispute to the Board is meritless. The Court recognized that "new-hire plaintiffs" might very well be barred from arbitration by laches. The record is replete with protests from the Claimant demonstrating he was fully aware the Carrier did not agree with his seniority claim. Nonetheless, the Claimant took no steps to perfect his rights in accordance with Section III(i) of the Railway Labor Act. the Beardsley decision and remand did not retroactively reinstate those rights. The at least eight year delay in protesting his Clerk's seniority is an unreasonable and unsupportable breach of the statutory requirements.

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AWARD

Claim dismissed.

O R D E R

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 Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.