

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30602
Docket No. MS-31749
94-3-94-3-157

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

(Alfonzo N. Plant, Sr.

PARTIES TO DISPUTE:

(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Alfonzo N. Plant, Sr. intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between Alfonzo N. Plant, Sr. and the National Railroad Passenger Corporation, involving the questions:

- 1.) Seniority should be placed above those junior to me and were not with Amtrak while terminated.
- 2.) How Rule 22 does not cover an employee terminated and reinstated in word or meaning.
- 3.) How I believe it would be appropriate to have my seniority grandfathered or whatever over to S.E.S. and T.L.S. rosters.
- 4.) Compensation that may be owed to me because of the N.R.P.C.'s refusel (sic) to comply with the B.M.W.E. Drug and Alcohol Agreement Public Law Board 5139.
- 5.) How I was not given the same first opportunity (sic) as was my former co-workers of P.R.S. was to come over to S.E.S. formerly P.R.S."

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 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.

Prior to the Claimant's dismissal in 1988, he held seniority as an Engineer Work Equipment (EWE) with the Panel Renewal System (PRS) a specialized work unit established pursuant to Rule 89. In accordance with Rule 89, each work unit established thereunder is considered as a separate seniority district. The appeal of the Claimant's dismissal was handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes and, failing to reach an adjustment in this manner, it was filed with this Board. Eventually the Claimant's appeal was withdrawn from this Board and listed with Public Law Board No. 5139 for final resolution.

However, the Claimant's appeal was not heard by Public Law Board No. 5139 because on November 17, 1992, the Organization and the Carrier reached an Agreement to offer reinstatement to the Claimant and other similarly situated employees dismissed under similar circumstances, contingent upon the acceptance of certain conditions of reinstatement. The Claimant accepted the conditional reinstatement offer on December 8, 1992 and was returned to service on February 17, 1993. The Reinstatement Agreement specified that the Claimant would be reinstated with full seniority rights restored. Hence, the Claimant was entitled to the restoration of the seniority dates he possessed immediately preceding his dismissal. Inasmuch as there is no evidence in the record suggesting that, upon reinstatement, the Claimant lost any seniority that he had established prior to his dismissal, Part (1) of the claim is denied.

On April 8, 1993, the Organization filed a seniority roster protest in accordance with Rule 16 requesting that the Claimant be afforded seniority dates on the TLS and TLM Seniority Rosters. TLS and TLM are also Rule 89 units which comprise separate seniority districts. The Carrier denied said protest on the grounds that the Claimant never established the seniority dates claimed and Rule 22 governed the award of seniority to employees returning to service.

Rule 22 reads, in pertinent part:

"RULE 22

RETURNING TO DUTY AFTER LEAVE OF ABSENCE, SICKNESS, ETC..
EXERCISE OF SENIORITY

An employ returning to duty after leave of absence, vacation, sickness, disability or suspension, shall, within five (5) days, after reporting as ready for duty, return to his former position, exercise seniority to any position advertised during his absence, or may displace any junior employ promoted to a position under this agreement during his absence, subject to Rule 2 (a)."

Rule 22 recognizes that if the Claimant had not been absent, his seniority and qualifications could have entitled him to promotional opportunities. We find no substantive difference between a return to service following a suspension and a return to service following reinstatement with seniority rights restored. Hence, the right of the Claimant to establish seniority when returning to service under these conditions was governed by Rule 22. Therefore, Part (2) of the claim is denied. The Board considered the application of a similar Rule, which had a common origin with the instant Rule 22 in a predecessor Agreement, in the dispute decided by Third Division Award 25935 and held:

"*** It does not allow an increase in seniority to other classes retroactively in terms of 'what might have been' or 'could have been' had the employ actually applied and been qualified. There is nothing in Rule 3-D-5 that protects the disabled employ against the central elements of this Claim, in which a junior employ did apply and did qualify for promotion. If the Rule applied to such conditions it would be so stated and documented. Absent clear and convincing evidence to substantiate the Claim with respect to Rule 3-D-5, this Board has no alternative, but to deny the Claim."

Here, as in Award 25935, the remedy specifically and unambiguously provided in the Agreement for the loss of opportunities while absent is that the employee may displace to any position advertised during his absence. Had the parties intended to provide for a broader remedy, they could easily have so specified in the Agreement. Since they did not do so, it is beyond the jurisdiction of this Board to provide such an expanded remedy, it being well settled that it is beyond the jurisdiction of this Board to add to or modify the clear language of the Agreement.

In this case, upon his return to service, the Claimant exercised seniority to a Trackman position in the Track Laying System (TLS) which had been advertised during his absence. In accordance with Rule 22, the Claimant was awarded the same seniority date on the appropriate seniority roster as the employee he displaced and was placed directly ahead of said displaced employee. That displacement and establishment of seniority exhausted the Claimant's remedy under Rule 22.

Inasmuch as the clear language of Rule 22 does not support the award of the additional seniority dates requested and no basis in the Agreement beyond Rule 22 has been shown to support a retroactive award of any seniority date, Part (3) of the claim requesting the award of additional seniority dates on additional seniority rosters is denied.

It is noted that Part (4) of the claim constitutes a request for enforcement of an Award of Public Law Board No. 5139. Insofar as the jurisdiction to enforce an Award of a Public Law Board is concerned, Section 3, Second, of the Railway Labor Act provides in pertinent part:

"*** Compliance with such awards shall be enforceable (sic) by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board."

Inasmuch as jurisdiction to enforce an Award of a Public Law Board is vested in the United States district courts and not in this Board, Part (4) of the claim is beyond the jurisdiction of this Board. Accordingly, Part (4) is dismissed without consideration of the merits thereof.

With respect to Part (5) of the claim, there is no evidence in the record of the handling of this dispute on the property to show that the Carrier deprived the Claimant of any opportunity provided by the Agreement to transfer from the PRS to the Switch Exchange Systems (SES) Seniority Roster, yet another Rule 89 unit. Accordingly, Part (5) of the claim is denied.

AWARD

Claims denied or dismissed.

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 Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.