

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30863
Docket No. CL-30691
95-3-92-3-487

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

(Transportation Communications International
Union

PARTIES TO DISPUTE: (
(Monongahela Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the TCU
(GL-10831) that:

- (a) The Carrier violated the TCU Rules Agreement, effective April 1, 1951, as revised July 26, 1990, particularly Rules 6, 16, 23 and other rules, when the Carrier failed to remove Non-Agreement Supervisor J. J. Joswick from the Monongahela TCU Clerks Seniority Roster, upon his accepting employment with another railroad, Conrail, effective April 1, 1991.
- (b) Claimant J. I. Gallagher now be allowed eight (8) hours time and one half pay at the daily rate of \$127.72 as a penalty, for October 22, 1991, retroactive for sixty (60) days and all subsequent dates on a continuing basis, until this violation is corrected and J. J. Joswick is removed from the Monongahela TCU/Clerks Seniority Roster.
- (c) Claim has been submitted in accordance with Rule 32 and should be allowed as presented. Please advise as to the pay period this claim will be allowed."

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 waived right of appearance at hearing thereon.

J. J. Joswick established seniority on the clerical roster on June 1, 1965. On August 15, 1976, Joswick was promoted to the position of Train Dispatcher. On May 1, 1982, he was promoted to the non-Agreement position of Trainmaster. On April 1, 1991, Joswick was transferred to a supervisory position with Conrail, the parent company of the Carrier. From August 15, 1976, and at all times in promoted positions, Joswick retained his 1965 seniority date on the clerical roster.

On April 19, 1991, the Local Chairman wrote to the Carrier President requesting that Joswick's name be removed from the Clerks' Seniority Roster effective April 1, 1991. On April 24, 1991, the Carrier responded indicating Joswick was offered a leave of absence to fill a vacant Conrail position in Pittsburgh.

On May 6, 1991, the Organization answered asserting Rule 23 does not permit the granting of a leave of absence to accept employment in outside service. On May 15, 1991, the Carrier acknowledged the Organization's May 6, 1991, letter and advised "...consideration will be given this issue at the time the roster is published in January 1992, under the rules of the Agreement." In subsequent correspondence, the Carrier maintained Joswick's position with Conrail was not considered an outside job because the Monongahela was a wholly owned subsidiary of Conrail. Thereafter, on October 22, 1991, the Organization submitted this claim alleging a violation of Rules 6, 16, and 23 in that the Carrier failed to remove Joswick's name from the seniority roster effective April 1, 1992.

The Carrier raised a procedural argument which is moot. In this instance the record discloses that the Carrier is a subsidiary of Conrail and when exempt employee Joswick went to work for Conrail, he did not commence work for an outside concern as contemplated by the Agreement in the usual sense. He simply went to work for the parent company and that nexus allows the continuation of his seniority. The case must be denied because the Organization failed to meet its burden of proof.

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AWARD

Claim denied.

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 10th day of May 1995.