

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31680
Docket No. MS-31986
96-3-94-3-342**

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

(Timothy A. Morgan

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"I started 5-31-1977 for Maine Central Railroad as a Trackman. Obtained my Machine Operators rating on 7-27-1981. I was furloughed on 10-28-1985 and not asked to return until I was re-hired on 5-11-1993, as a new man with no rating. Before I was two years and off the roster, as our contract states, Springfield hired men off my roster with less rating than myself and gave them their Maine Central rating back. Springfield also hired new men and put them on the Maine Central roster, ahead of me.

The remedy sought is to retain my trackman rating 5-31-1977; Machine Operator rating 7-27-1981; Receive the back pay and years of retirement I lost."

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.

Claimant was hired as a Trackman by the Maine Central Railroad on May 31, 1977. Claimant was furloughed on October 10, 1985. In February 1987 through a series of lease transactions approved by the Interstate Commerce Commission the Springfield Terminal became the operator of the Maine Central Railroad. Employees affected by the lease arrangement were provided protection under the Mendocino Coast Conditions. Because the Claimant was furloughed more than a year and one-half before the transactions, the protective conditions do not apply. On May 11, 1993 the Claimant was hired by the Carrier as a new employee. The Claimant is asking that his May 31, 1977 seniority date be restored.

The Carrier asks that the case be dismissed on the basis that this Board lacks jurisdiction. It avers that an arbitration provision exists in the Mendocino Coast Protective Conditions that the Claimant should use.

The Petitioner bears the burden of proving that the Agreement has been violated. A close review of the Claimant's Submission does not reveal what Agreement was allegedly violated when he was hired on May 11, 1993. Because the Claimant fails to cite an Agreement or portion of the Protective Conditions that were violated, he has failed to meet this burden.

The Board must deny the claim. In doing so it cautions the Claimant and employees similarly situated that, if their claim is for a violation of the Mendocino Protective Conditions or its Implementing Agreement, this Board is not the proper forum to hear such cases.

AWARD

Claim denied.

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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 29th day of August 1996.