

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31891
Docket No. MS-31685
97-3-93-3-668

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(William A. Boggs

PARTIES TO DISPUTE:(

(Southern Pacific Railroad Company

STATEMENT OF CLAIM:

"It is my contention that seniority accrued by me from Dec 17, 1963 thru May 1, 1987, was "bought and paid for" by me and was mine only, not a Bargaining Tool of the Company or the Union. The bargaining at this period in time involved the carriers request for clerical position buy-outs and the loss of revenue to the union with them. To compensate for this loss, the Company agreed to remove promoted personnel from seniority rosters if they refused to pay dues to organizations in which they could not participate. This, to the benefit of no one but the Union and the Carrier."

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.

The Claimant was employed by the Carrier on or about December 17, 1963 in a bargaining unit position. On or about May 1, 1987, he accepted a non-represented position with the Carrier. He was removed from this position on August 15, 1993. At

this point, the Claimant sought to exercise seniority, to which he believed he was entitled, in returning to a bargaining unit position.

As of March 1, 1987, the Carrier and the Allied Services Division, BRAC (now TCU) negotiated a change in their Agreement in Rule 3-J. In substance, the revised Rule provides that promoted employees may retain their seniority standing by maintaining membership in the Organization and continuing to pay dues. Failure to do so meant that the promoted employee "would forfeit all seniority held under the Agreement".

The record shows that the Claimant was fully advised of this change. The record further shows that the Claimant did not elect to maintain his membership standing.

The Claimant sought to exercise seniority in a represented position in August 1993. Under the terms of Rule 3-J, he was not permitted to do so. There is no argument set forth to suggest that the Carrier violated the Agreement in any manner.

Having reached this conclusion, there is no need for the Board to consider the Carrier's procedural argument that the claim should be dismissed.

The claim seeks to include the Organization as a party to the dispute. This is to no avail. Section 153, First, (i) of the Railway Labor Act refers simply to "disputes between an employee or group of employees and a carrier or carriers."

AWARD

Claim denied.

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 4th day of March 1997.