

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33048
Docket No. MS-33545
99-3-96-3-1133**

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

(John S. Reardon

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Seniority. On August 9, 1995 the National Railroad Passenger Corporation (Amtrak) and the Brotherhood of Maintenance of Way Employees General Chairman John Davidson (sic) who is not my locals (201) bargaining (sic) agent, entered into an agreement that gave 5 new hires super seniority on the Old Colony Lines which violated rule 5 of the Basic Labor Agreement and took away my seniority on these lines in which I was working on for 5 months before this agreement took effect, which resulted in me being bumped off a high paying overtime job, there for (sic) I am requesting this agreement to be found in violation of my seniority rights and be canceled. enforcement of rule 5 of the basic labor agreement, Full payment of all lost wages plus interest and returned to the permanent job I held when I was bumped by a junior employee, The I+R Foreman of the Middleboro crew headquartered in Readville Mass.”

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.

On January 1, 1987 the Carrier became the operator of the commuter train service of the Massachusetts Bay Transportation Authority (MBTA) and in doing so negotiated Implementing Agreements with various labor Organizations, including the Brotherhood of Maintenance of Way Employees. The Agreement with the BMWE provided that the Carrier would offer employment to employees of the former Boston and Maine Railroad (B&M), which operated the service before the Carrier, and that the MBTA commuter service thereafter operated by the Carrier would constitute a separate seniority district. Further, the parties agreed that any Conrail employees who would be hired would be placed on the seniority roster with all seniority that they had established as employees of Conrail intact. Five such employees were hired and because their seniority under the Implementing Agreement was greater than that of the Claimant, Claimant was subsequently bumped. He then filed the instant claim.

The Carrier initially makes several procedural or jurisdictional arguments that, if adopted, prevent the Board from reviewing the case on the merits. The first of those arguments is that the claim is procedurally barred because it was not filed, as required by Rule 14, with the Claimant's Supervisor, but rather with the Division Manager. We do not find under the circumstances that such a shortcoming is a fatal flaw.

Similarly, we do not adopt the Carrier's argument that the Claimant put forth before the Board a claim that differs substantially from that handled on the property. Initially and on the property the Claimant asked that the Implementing Agreement be voided and that he be restored all lost seniority. Before the Board he has asked to be reinstated and made whole. In each instance however, and indeed at all points at which the claim has been considered, the Claimant's underlying argument remained the same, i.e., that the Carrier violated Rule 5 of the Agreement. Therefore we do not believe that the claim differed in any fundamental respect at any point since the Claimant initially filed it.

The third procedural, or more accurately, jurisdictional argument of the Carrier bears strong consideration. On this point the Carrier contends, and we agree, that the Claimant asserts that the basis for the Rule 5 violation lies in the seniority terms of the Implementing Agreement when it assumed operations of the MBTA from the B&M. Thus, to adopt the Claimant's argument we would be called upon to determine whether that Agreement was legal and binding. This, as the Carrier points out, is a task that is

well beyond the jurisdiction of the Board because our authority is limited to the interpretation or application of agreements concerning rates of pay, rules, or working conditions and does not include a review of the legality of agreements entered under the Railway Labor Act. See, Third Division Award 21926. Accordingly, we find that the claim is not properly before us.

AWARD

Claim 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 24th day of February 1999.