

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33234
Docket No. MS-32971
99-3-96-3-352**

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

(Lynn P. LaShomb

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Dispute: The dispute revolves around the issue of Seniority. My attempt to bump a junior employee on December 30, 1994 was denied. I had 19 years of seniority and the junior man had 5 years of Conrail seniority at that time.

Question: The question is whether Seniority as defined and bargained for in the agreement is the deciding factor or whether Superseniority is to be allowed, an issue that has been shot down in court decisions.

Remedy: Pay for time lost and all benefits associated with such, including retirement credits.

This is the second part of a previous case, that has not been ruled on yet. In the first part I lost two months of pay and retirement credits. The carrier hired me back for three weeks and again layed me off. My subsequent attempt to bump the junior foreman was again denied resulting in the loss of four more months of pay and retirement credits.”

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 October 18, 1989 the Carrier, the Canadian National Railway (CN) and the BMWE entered into an Agreement providing, inter alia, for the employment of three former CN employees represented by the Organization upon the purchase by the Carrier of the CN line between Massena, New York, and the U.S./Canadian border. The Agreement provided that with respect to these three employees their seniority with the Carrier would begin with the date of the sale, but that they would hold prior rights to any positions headquartered on the former CN line that was purchased. The Agreement also designated the three employees as having protected status under New York Dock.

On September 29, 1994 the Claimant was furloughed from a Foreman position at Massena, New York, and his attempt to displace one of the three employees described above was rejected. The instant claim was then pursued.

The essence of the claim is that the Claimant quarrels with the impact of the October 18, 1989 agreement as it relates to his own circumstances. However, that does not alter the fact that by way of that Agreement the parties decided that the three former CN employees affected would hold prior rights to any positions headquartered on the former CN line. Moreover, the evidence is clear that the position from which the Claimant attempted to displace one of those employees is indeed a position that was headquartered on the former CN line. This Board can only interpret and apply an agreement as written. In doing so we find, by the clear and unambiguous language of the parties' Agreement, that the prior rights of the three employees covered by the October 18, 1989 Agreement prevailed over any rights that the Claimant might have under these circumstances.

Finally, it is unclear that the Claimant is making a claim for New York Dock protective benefits. However, to the extent that he may be doing so by way of this claim

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we find that this Board has no jurisdiction over such claims as the New York Dock conditions has its own exclusive arbitration provisions.

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 21st day of April 1999.