

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33349

Docket No. MS-34063

99-3-97-3-552

**The Third Division consisted of the regular members and in addition Referee
Marty E. Zusman when award was rendered.**

(Robert G. Kennedy

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

“The Claimant Mr. Robert G. Kennedy, was involuntarily and through no fault of his own, permanently terminated from his TCU/BNSF working Agreement covered and fully excepted (FE) exempt status subordinate official position of Manager Labor Relations (L/R), a position that was subject to unionization, when that position was abolished a consequence of BNSF’s merger. As a result, and under the protective provisions found in Appendix O, Memorandum of Agreement and made part of the working Agreement, Mr. Kennedy was obliged to exercise his Agreement protected seniority rights onto a fully scheduled position. While holding his subordinate official exempt position, the preponderance of work Mr. Kennedy performed fell totally within the scope of the Agreement. He is a member in good standing with, and has been continually represented by TCU.

Therefore, under the provisions of Articles I, Sections 1 & 5 and/or IV of New York Dock (NYD) Conditions, which were imposed by ICC as condition of final approval of BNSF’s merger and automatically became an extension of the working agreement, Mr. Kennedy is a ‘displaced employee’. And as such, he is entitled to a monthly displacement allowance’ from BNSF, which is equal to the following total compensation he lost when he was displaced beginning January 1, 1996.

The difference in earnings between Mr. Kennedy’s former exempt status subordinate official position and the schedule position he was forced to exercise his seniority onto. This amount to be increased on an annual basis of not less than the federally published cost of living index increase for the

previous year, but not less than the 3.56% merit increase he received in 1995.

An annual bonus in line with Mr. Kennedy's former annual exempt status subordinate official position's income and BNSF's performance, but not less than the bonus he received for 1995.

1 1/2% of Mr. Kennedy's annual base salary plus bonus for BNSF's match portion of his thrift and profit sharing contribution that was in effect at the time of his termination.

Continuation and payment of Mr. Kennedy's and his spouse's life insurance at three (3) times the amount of the base annual salary of his former exempt status subordinate official's position, plus increases.

Full annual contributions by BNSF to the exempt employee's pension plan fund in Mr. Kennedy's behalf, with a full BNSF Company pension to be paid to him and/or his spouse when he/she applies for his Railroad Retirement Annuity, or he reaches age sixty-five (65) whichever comes first.

Full reimbursement of all out-of-pocket personal moving expenses incurred by Mr. Kennedy and his spouse as a result of his forced relocation from Ft. Worth, TX to St. Paul, MN."

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.

The Board is mindful of the facts and has carefully reviewed the Claimant's position articulated in both his Submission and before the Board. Central to this claim is a dispute involving two key assertions. The Claimant held the position of Manager of Labor Relations which he asserts was a subordinate official position covered by the Burlington Northern Santa Fe/Transportation Communications Union Agreement. Secondly, the Claimant asserts that he is entitled to recover lost compensation under the New York Dock Conditions' monthly displacement allowance.

The Board cannot find the Claimant to be a "subordinate official." The evidence is without sufficient and persuasive proof. The Claimant occupied the position of Manager of Labor Relations, an exempt position which was abolished. There is no evidence to prove it was covered by the Agreement. The issues before this Board when taken as a whole, request that since he was a subordinate official covered by Appendix O under the BNSF/TCU Agreement, after the abolishment he was due compensation under the New York Dock Conditions.

The dispute herein before us is a claim for the benefits of the New York Dock Conditions. This is beyond the jurisdiction of the Board and properly belongs within an Arbitration Committee pursuant to Article I, Section 11 of the New York Dock Conditions. There are no issues or facts which permit this Board to review the instant claim. It is beyond our authority and must be dismissed (First Division Award 24804; Third Division Award 29317; Fourth Division Award 4219).

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 23rd day of June 1999.