

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33592
Docket No. CL-33161
99-3-96-3-599

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11370) that:

- (1) Carrier violated Rules 10 and 15 of the Agreement between the Parties beginning July 3, 1995, when it refused to allow Clerk Floyd Jenkins to exercise his seniority in accordance with the Agreement.
- (2) Carrier shall now be required to compensate Clerk Floyd Jenkins a day's pay at the pro rata rate of \$123.72 per day beginning July 3, 1995 and continuing five (5) days per week thereafter.

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.

This case has a history.

Claimant was first dismissed on January 16, 1992 for allegedly failing to exert full and proper efforts to become qualified as an Operator-Leverman at Bridgeport Tower. In Third Division Award 30250, the Board sustained the Organization's claim finding lack of proof of negligence or malfeasance on Claimant's part. However, backpay was awarded only up to May 12, 1992 after the Carrier made a bona fide offer of reinstatement in a letter dated April 28, 1992 reinstating Claimant "fourteen days from the date of this letter."

Third Division Award 30250 was adopted on June 8, 1994. However, prior to that date the Carrier again dismissed Claimant effective July 16, 1992, this time for insubordination after Claimant failed to report for work within "fourteen days from the date of" the Carrier's April 28, 1992 letter. In Third Division Award 30904, the Board again sustained a claim on Claimant's behalf because the April 28, 1992 reinstatement letter instructed Claimant to report to Homewood, Illinois, and Claimant "did not report for no other reason than he believed the conditions of assuming his seniority rights was incorrect." The Board found the Carrier had a basis for disciplining Claimant in that "[t]he precedent of obey now and grieve later is most apt in this situation [and] Claimant should have returned as instructed, and thereafter pursued his perceived Agreement rights through the grievance procedure." However, the Board found that in light of Claimant's length of service, his good record, and the degree of insubordination, dismissal was excessive. Claimant's discipline was limited to a period from July 16, 1992 (the effective date of his dismissal for insubordination) until the date he should have been reinstated pursuant to Third Division Award 30250, with backpay entitlement commencing subsequent to the date the Carrier was obligated to reinstate Claimant pursuant to that Award. With respect to Claimant's seniority rights upon reinstatement, the Board stated in Third Division Award 30904:

"This Board does not, to reiterate, offer any opinion as to what seniority rights Claimant may have when he returns. If he does not agree, he has the right to pursue his grievance pursuant to the Railway Labor Act, but he cannot delay his return to enhance his compensation."

That is where this phase of the dispute begins. Another claim followed when, subsequent to Third Division Award 30904, the Carrier took the position that Claimant's reinstatement would be to the Extra Board at Homewood, Illinois. The Organization asserts that Claimant should have been permitted full displacement rights pursuant to the Agreement as an employee who failed to qualify for a position — that

position being the one on which Claimant failed to qualify as discussed in Third Division Award 30250.

Third Division Award 30250 reinstated Claimant "with seniority and other rights unimpaired." As of that reinstatement, Claimant was an employee who failed to qualify for the Operator-Leverman position at Bridgeport Tower. Claimant was therefore entitled to exercise his full contractual displacement rights as an employee who failed to qualify for a position. See Rule 10(b) ("An employee who acquires a position through displacement rights and fails to qualify within thirty working days will be allowed seven days from date of removal in which to exercise displacement rights."). There is no basis in the Agreement to limit Claimant's reinstatement rights to Homewood as the Carrier asserts.

Claimant shall have 30 days from his notification of the results of this Award to exercise his displacement rights. Failure of Claimant to exercise those rights within that period will extinguish any such entitlements Claimant may have. There is no evidence that Claimant lost pay as a result of the Carrier's actions in this phase of the dispute. Claimant shall therefore receive no compensation from this Award.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of November 1999.