

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34202
Docket No. MS-35162
00-3-98-3-917**

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

(Robert A. Cote
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“[The Carrier] [has made] . . . an omission in the 1998 clerical roster. . . . The clerical prior rights designation (C) next to the name of prior rights clerks is missing. This designation was used to show superior seniority for a clerk on a clerical position, above a telegrapher, after the dovetailing of the Clerical/Telegrapher rosters on February 15, 1973.

I know my prior rights are in-tact as guaranteed by Rule 66, Paragraph A, page 67 of the February 15, 1973 agreement and also in spirit by [the Carrier’s . . . letter of February 2, 1996 to, and endorsed by Mr. A. P. Santoro, Jr.

The should be reflected on the current roster.”

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 Claimant seeks a "C" designation on the 1998 Clerical roster. The Claimant asserts that this prior rights designation appeared on every roster between 1973 and 1986 and that there were no rosters posted in 1987, 1988 and 1989. According to the Claimant, the omission began in 1990. On the property, the Carrier responded that "[t]his same protest has been submitted by you and rejected by the Carrier every year since 1993."

Rule 38.7 of the Agreement provides that "[t]he decision of the Director of Labor Relations will be final and binding unless within nine months of such final denial the claim is disposed of on the property or proceedings for disposition of the claim are instituted by the Employee or the duly accredited representative before the appropriate division of the National Railroad Adjustment Board. . . ." From a procedural standpoint, the Carrier's position that the Claimant's position has been "... rejected by the Carrier every year since 1993" requires a finding that this same dispute previously finally decided on the property is now untimely and the Board does not have jurisdiction to consider this matter.

However, putting aside the procedural infirmity, on the merits this claim must be denied. On December 31, 1995, the Carrier and the Organization entered into an Agreement which, with respect to seniority rosters, provides:

"Rule 12. Seniority Roster

12.2 Prior rights will be designated on the roster as follows:

B = Boston and Maine Corporation Prior Rights (Seniority Districts)

**M = Maine Central Railroad/Portland Terminal Prior Rights
(Clerk/Operator/Stores)"**

The Claimant is a former Boston and Main employee. Under the above language in Rule 12, the Claimant is entitled to Boston and Main and prior rights by his Seniority District. The 1998 roster shows the Claimant as #61 with the prior rights designation "B" which indicates Boston and Main. The roster also shows SU-2 which is the Claimant's Seniority District. The Claimant thus received the contractual designation

set forth in the governing Agreement. That is all that the Claimant is contractually entitled to. On the merits, the claim therefore lacks rule support.

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 23rd day of August, 2000.