

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36950
Docket No. MS-36768
04-3-01-3-344

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

**(S. L. Vesnefskie
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company**

STATEMENT OF CLAIM:

“This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board, effective May 19, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between myself and the Norfolk Southern Railway involving the following:

Transfer of prior rights from Allegheny B Seniority District (under William E. Fredenberger Jr neutral referee arbitrating agreement. See Norfolk Southern side letter No. 2)

Remedy sought; Transfer of all Allegheny Seniority to the Harrisburg Seniority District.”

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 record reflects that as part of an acquisition by the Carrier of the rail properties of the Consolidated Rail Corporation (Conrail) a New York Dock arbitration was held before referee William E. Fredenberger. As a result, Referee Fredenberger issued an Award that provided for the integration of seniority of Conrail employees who were to become employees of the Carrier. Subsequently, the Carrier and the Brotherhood of Maintenance of Way Employees entered into a Memorandum of Agreement providing that Track Sub-Department employees would be placed into either the Dearborn, Pittsburgh, or Harrisburg Division Seniority rosters and would have a prior rights territory based on their standing on the former Conrail Seniority District rosters so long as the prior righted employee would have only one prior rights territory and designated Division. In addition, the parties agreed that if an employee's residence was located in a different Division and/or prior rights territory than those designated for his seniority date, that employee had a one-time chance to request a change to the Division or prior rights territory that included the location of his residence. However, the change of residence had to have occurred before February 5, 1999 and the relocation sought had to be within the prior rights territory to which the employee was requesting to move his prior rights seniority.

The Claimant established seniority on Conrail in its Track Department on the Allegheny Seniority District. Thus, under the Agreement implementing the Fredenberger Award his prior rights territory was the Allegheny District because it was the former Conrail District on which he possessed his earliest seniority date. Subsequently, but while still employed by Conrail, the Claimant established seniority on the Harrisburg Seniority District. Following the acquisition of Conrail properties by the Carrier, the Fredenberger Award, and the implementing Agreement, the Claimant requested that his prior rights territory be changed from Allegheny to Harrisburg in light of a change to his residence and the request was granted. However, the BMWE contested the change and the Claimant's prior rights territory was, upon Investigation, deemed to be the Allegheny District, again because it was the Conrail District on which he possessed his earliest seniority date. It is this denial that forms the crux of the instant dispute.

In our estimation, the claim must fail under the directives set forth in the Agreement implementing the Fredenberger Award. As noted above, a request to change a prior rights territory designation would be granted only if there was a change to an employee's residence such that the new residence was within a different Conrail prior rights district than that designated for that employee. The record reflects that the Claimant's change of residence was between Paxinos, Pennsylvania, and Shamokin, Pennsylvania, a distance of approximately six miles and both within the same Conrail prior rights district.

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 22nd day of March 2004.