

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37138  
Docket No. MS-37625  
04-3-02-3-730

The Third Division consisted of the regular members and in addition Referee James E. Nash when award was rendered.

(Ronald C. Carlson  
**PARTIES TO DISPUTE:** (  
(Union Pacific Railroad Company

**STATEMENT OF CLAIM:**

“Was the award of the job to Metra warranted under the contract and did it violate my rights under the New York Dock?”

**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 nature of the Claimant's complaint is not clear from reading his Statement of Claim. But, insofar as the Board can determine from other documents he submitted, he is asking for benefits which he believes he is entitled to in connection with a requested transfer to Commuter Operations, District 27. The Claimant made request in June 1995, and transfer was effected on July 7, 1995. In a letter dated October 8, 2000, "To Whom It May Concern," the Claimant writes:

**"I claim New York Dock [benefits] from the year prior October 1, 1995, the last time I worked for the Union Pacific. The Metra Division I worked for, (with CNW rules), was not recognized as being part of the Union Pacific.**

**. . . This is still part of the merger because of all the seniority and money I lost due to it, and the Company and Union's agreement to right the wrong they created.**

**So, in essence, I claim my Test Period Average from a year prior to October 1, 1995."**

**Records confirm that the Claimant did, in fact, bid a job in Commuter Operations that was bulletined on June 29, 1995 – prior to the effective date of the merger. His transfer was made in accordance with Rule 11 of the Agreement between TCIU Allied Services and the Chicago and North Western Transportation Company (C&NW). Master Merger Implementing Agreement NYD-133 provided that employees in Commuter Operations would remain under the CBA between Allied Services and the C&NW, while the remainder of the former C&NW clerical employees – to include Department vacated by the Claimant - would be covered by the existing Agreement between TCIU and the Union Pacific Railroad Company and would be entitled to New York Dock (NYD) protective benefits.**

**The Claimant made several requests to return to his prior work zone. Requests were denied based on the Carrier's position that Commuter Operations and the Claimant's prior work zone were now governed by two discrete Agreements. There were no provisions in Master Merger Implementing Agreement NYD-133 that would allow such transfer between Agreements.**

**After reading the briefs, attachments, exhibits, Agreements, prior Awards and considering the oral arguments presented by both parties, the Board has concluded that it sits without authority to hear this dispute. We make this determination for two reasons:**

**First, the Claimant freely acknowledged in his letter dated October 8, 2000, addressed "To Whom It May Concern" that his claim had to do solely with New**

York Dock benefits entitlements. Resolution of disputes between parties having to do with New York Dock benefits were set forth in Master Merger Implementing Agreement NYD-133. It provided that disputes would be heard by a Special Board of Adjustment (SBA). The Third Division of the National Railroad Adjustment Board (NRAB) is not empowered to hear such disputes.

Second, the event that triggered this dispute occurred in July 1995. The Claimant has asked the Board to hear his grievance some seven years later. The Board follows the well established general principle that the clock on time limits begins to tick when the event that gave rise to the complaint occurred. Where there is a delay, the delaying party has the burden of showing the inability to act earlier. In the case at bar, the delay was unreasonable, and it appeared to have grown out of the Claimant's own inattention or lack of interest. Disregarding for the moment that he failed to give timely notice of intent to register a dispute with the Board, the record indicates that he missed several other time limit requirements on the property.

In any event, the delay was well outside the limits of any reasonable time restriction. For reasons cited, and others, this dispute is not properly before the Board.

In addition it is noted that if we had been able to consider this dispute on its merits, the record indicates that an Agreement was made on February 4, 2000, between the parties which covered clerical employees that had previously held seniority on other C&NW Rosters that had been merged with UP Zone 226 subsequent to the UP/C&NW merger. The February 4, 2000 Agreement allowed the Claimant and others a one-time opportunity to bring over their earliest continuous clerical seniority date with the UP/C&NW. The record further indicates that the Claimant exercised that option and brought over his additional seniority. Having acquired that additional seniority he has already received the remedy requested and this claim is moot.

#### AWARD

Claim dismissed.

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**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 25th day of August 2004.