

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37342  
Docket No. SG-37428  
05-3-02-3-472

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Baltimore and  
( Ohio Railroad Company)

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Grievance on behalf of C. E. Potter, for his seniority rights restored on the Baltimore East End Seniority District, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement 15-18-94, when it improperly removed the Claimant from his prior rights seniority district in a letter dated June 21, 2001. Carrier's File No. 15(01-0137). General Chairman's File No. BEE-1-09-1. BRS File Case No. 12125-B&O.”

**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 Organization filed the instant claim on behalf of C. E. Potter alleging that the Carrier violated the Agreement when it removed the Claimant from the Baltimore East End Seniority Roster.

The Organization contends that the Claimant was recalled to a position on the Baltimore East End ("BEE") Seniority Roster in accordance with the Agreement, thereby leaving vacant the Claimant's former position on the Western Maryland ("WM") Seniority Roster. When that vacant WM position subsequently was advertised over the B&O System, the Claimant bid on and was awarded the position, in accordance with the Agreement. The Carrier thereafter, in accordance with the Agreement, recalled the Claimant to the vacant position on the BEE, again leaving the WM position vacant. Again, and in accordance with the Agreement, the Claimant subsequently bid on and was awarded the vacant WM position.

The Organization asserts that the Carrier's June 21, 2001 letter to the Claimant informing him that his name was being removed from the BEE Seniority Roster is not in accordance with the Agreement. The Organization emphasizes that the Carrier cannot cite any Agreement Rule that the Claimant violated. Instead, the Carrier violated the Agreement by removing the Claimant from the BEE Seniority Roster for no apparent reason. The Organization maintains that this is an unfair labor practice.

The Organization argues that the Claimant did not re-bid the position he had just vacated. Instead, the Claimant bid on and was awarded the position only after it first was advertised on the WM, and then advertised over the B&O System, in complete compliance with the Agreement.

The Carrier initially contends that its interpretation of the Agreement language is both reasonable and logical. It argues that its interpretation achieves a logical end, providing the Claimant with a recall opportunity to protect an assignment on the B&O territory; if such opportunity is rejected, then the Carrier may resort to a new hire to fill the assignment. The Carrier asserts that because the Claimant failed to protect that B&O assignment by returning to a WM assignment, the Claimant forfeited his prior rights to B&O seniority.

The Carrier points out that the Claimant was given two recall opportunities to protect B&O work and his seniority. The Claimant subsequently rejected these opportunities by immediately bidding back to his former position on the WM. The

Carrier maintains that the 1994 Agreement provides for a forfeiture of prior rights seniority should an eligible employee not accept recall to work on that territory. The Carrier argues that the Claimant's bidding back to the WM was tantamount to rejecting recall on the B&O. The Claimant consequently forfeited his B&O seniority.

The Carrier argues that a reasonable and logical interpretation of the language would not require it to continue this never-ending cycle of recalling the Claimant to the B&O assignment simply to have him bid back to his former assignment on the WM immediately after each recall notice. This would thwart Carrier's business need to have a regular incumbent on each position readily available to respond to the needs of the service. Such results are unreasonable and stifle the recall provisions of the 1994 Agreement. The Carrier asserts that there is no evidence to suggest that the Claimant may repeatedly continue this "recall and bid" dance without any work responsibility to either position.

The Carrier goes on to argue that when the Claimant immediately bid back to his former position on the WM territory, this act was a rejection of the recall notice to an assignment on the B&O territory. There is no question that the Claimant was not interested in protecting the B&O assignment. The Carrier therefore asserts that it was correct when it informed the Claimant, in the June 21, 2001 letter, that his seniority had been removed from the B&O roster pursuant to the 1994 Agreement. The Claimant clearly failed to take action to remain on the job, as is required to protect his seniority. The Organization's position that the Claimant may continually bid back to the WM, without any responsibility to the B&O assignment, flies in the face of the 1994 Agreement, which was designed to provide an adequate workforce on both the B&O and WM properties.

The Carrier emphasizes that the Claimant voluntarily chose to vacate his B&O assignment subsequent to the recall notices, demonstrating that he had no desire to fill the B&O assignment. Prior Awards have upheld the automatic forfeiture of seniority rights when employees failed to protect their assignments. The Carrier argues that the Claimant's voluntary departure from the B&O assignment by bidding to the WM assignment was similar to the abandonment of assignments mentioned in these Awards.

The Board finds that the Organization met its burden of proof that the Carrier violated the current Agreement when it improperly moved the Claimant

from his prior rights seniority district on June 21, 2001. The Claimant bid on and was properly awarded a position. He did not violate any Agreement Rule giving the Carrier the right to remove his name from that seniority roster position. We note that there is no basis for the Carrier to remove the Claimant from the seniority roster set forth in its June 21, 2001 letter. The Organization met its burden of proof that the Carrier acted improperly in this case and, therefore, the claim must be sustained. The Carrier improperly removed the Claimant from his prior rights seniority district on June 21, 2001.

**AWARD**

**Claim sustained.**

**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 19th day of January 2005.**