

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38845
Docket No. MS-38546
08-3-NRAB-00003-040352
(04-3-352)

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

(D. F. Pasciuto

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM:

"That Claimant D. Pasciuto be awarded a seniority date of November 10, 1999 as a Lead Maintainer account Carrier violated the NJTRO-BRS Agreement, particularly Rules 2-A-1(d), 3-B-2, and 3-A-1 and Section 5 of the Memorandum of Agreement dated August 14, 1995, when on October 29, 1999, a junior employee was assigned to Lead Maintainer position Symbol C-144."

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 claim before the Board has its origins in the 1999 awarding of a Lead Maintainer position. The Claimant was initially awarded the position, but failed to

achieve a passing grade on a baseline test. He reverted to his prior position and the Lead Maintainer position was subsequently awarded to a junior bidder by bulletin dated November 10, 1999. The Claimant now seeks that November 10, 1999 seniority date as a Lead Maintainer.

The record before the Board clearly establishes that the Claimant challenged the contractual propriety of the aforementioned events in accordance with the claim handling procedure of the applicable Agreement. All disputed factual and language issues were handled in the usual and customary manner on the property and, when not thereby resolved, were advanced to Special Board of Adjustment No. 954 for determination. In Award 72, issued on August 15, 2002, that Board found in favor of the Carrier and the claim was denied.

By letter dated July 5, 2004, the Claimant notified the Board of his desire to seek the remedy of a November 10, 1999 seniority date as Lead Maintainer. That is the claim now before the Board. The Carrier objects to our consideration of the claim. It contends that Award 72 of Special Board of Adjustment No. 954 disposed of the matter with finality. Accordingly, the doctrine of res judicata now prevents any reconsideration of the matter.

Our review of the record establishes that, indeed, all factual circumstances underlying the instant claim are identical to those of the claim determined by Special Board of Adjustment No. 954 except for the remedy requested. In the claim already determined, the Claimant sought a Lead Maintainer seniority date of October 20, 1999. As previously noted, he now seeks a seniority date of November 10, 1999. Thus the claim before the Board is not identical to the claim that was determined by Special Board of Adjustment No. 954. While the doctrine of res judicata may not apply because of this technical distinction, it is clear that all disputed issues that underpin the current remedy requested were determined by Special Board of Adjustment No. 954. Accordingly, any re-consideration of those previously determined issues are barred by the companion doctrine of collateral estoppel. In short, the estoppel doctrine prevents the Claimant from re-litigating issues between the same parties already conclusively determined against him by a forum of proper jurisdiction. Special Board of Adjustment No. 954 was such a forum. Thus, we must dismiss the instant claim.

Form 1
Page 3

Award No. 38845
Docket No. MS-38546
08-3-NRAB-00003-040352
(04-3-352)

AWARD

Claim dismissed.

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 30th day of January 2008.