

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22028
Docket Number MS-21954

Don Hamilton, Referee

PARTIES TO DISPUTE: (John Jennings
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of the intention to file an ex parte submission on January 17, 1977, covering an unadjusted dispute between Mr. Jennings and the Consolidated Rail Corporation involving the question:

Whether for purposes of merger between Penn Central and Conrail, Grievant will be caused to suffer a loss of seniority detrimental to his rights and privileges as a more senior employee to other employees with later seniority dates.

OPINION OF BOARD: At issue in this dispute is the Claimant's election to forfeit his seniority date as Block Operator (April 29, 1970), when he chose to remain and accumulate seniority as a Leverman in another seniority district as of July 15, 1973.

The Carrier contends this claim was not handled in the usual manner on the property as required by the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The record indicates that this contention is well taken. The claim should be dismissed because of this procedural defect.

Moreover, even assuming we could overlook other jurisdictional infirmities delineated by Carrier, we would be compelled to hold that Claimant's election to forfeit his Block Operator seniority in order to accumulate Leverman seniority was irrevocable in the absence of fraud or duress, which was neither alleged nor proven. In 1973, Claimant initiated the move which resulted in the loss of his Block Operator seniority, but he now insists the Carrier, Union or this Board should reinstate his former seniority rights. We have no power or jurisdiction to remake a contract. The claim is dismissed for all these reasons.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim is barred.

A W A R D

Claim dismissed as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.

