

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22073
Docket Number MS-22139

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Coletta A. Simbeck
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(Consolidated Rail Corporation

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on April 9, 1977 covering an unadjusted dispute between me and the Consolidated Rail Corporation involving the question:

Restoration of my former Erie Lackawanna Railway Original Seniority Date of September 23, 1969, which I feel I am entitled to, but which has been denied me because I bid for and obtained a position with the former Penn Central R. R. about one week before I was about to be furloughed; I took this action rather than stay at home and be an unproductive drain on Conrail (Consolidated Rail Corporation). At this time I was given Penn Central seniority as of the date this particular position was obtained or August 9, 1976.

Later, when severance pay was offered, I contacted the local Labor Relations Office and requested information relative to bidding on positions which were vacated as a result of severance, as well as those positions related indirectly with severance. In response I was told it would not be wise to bid such positions, unless, in fact, I actually wanted the position, since it would in no way regain my original Erie Lackawanna seniority for use on P. C. Roster #15. On the strength of this advice from the local Labor Relations Office: SPECIALST ON INTERPRETATION OF THE SPECIFIC AGREEMENTS INVOLVED: I did not bid to severance related positions.

Now other Erie Lackawanna employees, who were in the same position as myself (having P. C. seniority only on District 15 Roster), have, as a result of bidding on those same positions on which I had questioned Labor Relations, regained their original seniority.

Also, employees with less service than myself (9/23/69), and who have been furloughed or staying at home, have recently been assigned positions on PC Roster #15 and have been allowed to take their original or Erie Lackawanna Seniority Date with them to Roster 15.

I am, therefore, requesting my rightful Erie Lackawanna seniority on P. C. District 15 Roster, since I could have availed myself to those positions on which I questioned Labor Relations, and was given improper information. I do not feel I should be placed in a worse situation as a result of an uninformed representative of Conrail disseminating untrue statements. If said representative of Conrail did not know the proper interpretation, he should have told me he did not know, or more properly determined the right interpretation before distributing misinformation.

Please, place me in my proper standing on District 15 Roster (September 23, 1969), since technically, I have lost 7 (seven) consecutive years of Railroad service, and right now I could be bumped by anyone with more than only 7 (seven) month's service!! I feel this is a grave injustice and certainly isn't fair. I'm grateful that I am still working, but the loss of 7 (seven) year's service is hard to digest!

OPINION OF BOARD: This is a claim for "entered-service" seniority date (September 23, 1969), which Claimant contends she should have on the seniority roster to which she transferred on August 9, 1976.

Claimant was employed on Seniority District No. 30 (Erie Lackawanna General Office) on September 23, 1969. Effective August 9, 1976, she bid and was awarded a clerical position on Seniority District 15. She now contends she should be given her service seniority date of September 23, 1969 in Seniority District 15, as per agreement of February 28, 1977 which provides, inter alia, as follows:

"B. If the successful bidder on a vacancy also has Roster No. 30 seniority and is the senior Roster No. 30 employee to make application for position, this employee will get full seniority on Roster No. 15 (lose seniority on Roster No. 30) and the resulting vacancy will be advertised on Roster No. 15 bulletin."

The Carrier contends at the outset that Claimant did not handle the claim with her immediate supervisor, nor did she progress it in the usual manner as required by Section 3, First (i) of the Railway Labor Act or Circular No. 1 of the National Railroad Adjustment Board. Ample authority in support of these requirements is cited in the record. Furthermore, the Carrier asserts that Claimant's contractual rights to seniority evolve from the agreement and no provision is cited to support Claimant's demands in this case.

We note, in passing, the February 28, 1977 Agreement contains a provision which states:

"The above procedure will be adopted effective with March 1, 1977 . . ."

It is apparent any changes made prior to March 1, 1977 date were not covered by the February 28, 1977 Agreement; consequently Claimant has no contractual foundation for her claim. Aside from that, the claim was not handled in the usual manner and would have to be dismissed, if it were not denied on the merits.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.