

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

(Robert A. Arnold  
PARTIES TO DISPUTE: (  
(Baltimore & Ohio Railroad Company

STATEMENT OF CLAIM:

"Why I wasn't given a job over a junior employee, either at the time that I was refused by Mr. Smirl, or during the consolidations that have been brought over to the Chesapeake and Ohio Railroad since then? Also why I am bound by an agreement that no longer exists? Also why I wasn't notified when the four party agreement was cancelled?"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

A Four Party Agreement of October, 1973, allowed employees in the Baltimore area of the C & O, B & O and WM to fill positions on any of the signatory railroads that were not filled by employees of the railroad on which the vacancy existed. The transferring employees would retain home road seniority and would also establish a new seniority date on the railroad to which they transferred.

Section 6 of the Agreement provided:

"6. That an employe transferring from one road to another under the provisions of this Memorandum Agreement, who establishes seniority on the road to which transferred in accordance with Section 4 of this Memorandum Agreement and who, because of force reductions or displacement, is unable to exercise his seniority to another position on the road to which transferred, may, if

he so desires, within fourteen days from the date cut off, return to his home road and continue to accumulate seniority on the road to which transferred provided he returns to service on such road on the first bulletined position his seniority rights will permit him to fill.

NOTE: It is the intent of this Agreement that an employe transferring from one road to another must remain on the road to which transferred and may not return to his home road by bidding, or exercising displacement rights as long as he stands for a position on the road to which transferred."

This Agreement was cancelled in May, 1981.

Claimant was a clerical employee of the B & O with a seniority date of September 27, 1965. Pursuant to the Agreement he bid to the C & O where he obtained a seniority date of December 4, 1979, and where he is still employed.

In February, 1985, Claimant bid on a vacant position on the B & O but the position was awarded to a B & O employee with less seniority. After a claim was filed the General Chairman wrote Claimant on June 5, 1985, quoting portions of Paragraph Six of the Four Party Agreement and stating:

"Since you presently hold a regular position on the C & O, you do not have the right to bid on B & O positions."

Claimant had contended that inasmuch as the Four Party Agreement had been cancelled he should be allowed to exercise his B & O seniority. The General Chairman responded:

"While . . . employees are no longer transferred between Carriers under such agreement, those employees who previously transferred in accordance with said agreement remain obligated by the provisions attached thereto."

The General Chairman declined to progress the claim and informed Claimant of his appeal rights. Subsequent appeals were taken within the Organization and on August 23, 1985, the International President wrote Claimant that his claim lacked merit, also citing Paragraph 6.

For the reasons set forth in the Organization letters quoted above this Board is in agreement that the claim lacks merit.


While we believe this claim must be dismissed on the merits we do note Carrier's position that it was not properly progressed on the property by Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.