

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

(Jack C. Snyder

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of Jack C. Snyder that the Consolidated Rail Corporation violated the Agreement when it:

1. Abolished the Claimant's position of Traveling Representative on November 8, 1983, and commencing with March 11, 1985, transferred intact Claimant's principal work and duties to Janitor-Messenger, R. A. Torturica, a Service Employee, instead of calling the furloughed Claimant back to cover his own job.

Conrail thereby violated Rule 1 and Rule 4 of the BRAC, T-C Division, Agreement of July 1, 1979, by assigning such duties to a Service Employee, not covered by such Agreement, and who is younger in service and age than is the Claimant. This class of Service Employee does not perform such duties across the property, nor has this particular Service Employee, nor has any Service Employee any claim whatever to this particular work. This case was assigned Conrail Docket 19-85-M-0009. This work has by uniform custom, practice and history, system-wide, been exclusively performed, at these 15 one-man stations, by the Claimant and others of his Telegraphers craft. This work is the on-site taking and preperation (sic) of yard and track checks and switch lists, which continue to be essential to the servicing of Conrail patrons by the Traveling Switchers working out of various of these outlying stations.

The performance of this work at 15 outlying stations, and the attendant driving, did then and does now, constitute a full-time job.

Additionally, that the contracting parties clearly intended to exclude any other craft from performing said principal work or duties.

Conrail has alternately made and retracted three offers of alternative employment, of the Claimant, since they furloughed him on November 8, 1983.

Conrail has thereby made the provision of alternative employment, of the Claimant, a part of this dispute.

Further, Conrail refused to place the Claimant in one of the twelve (12) Assistant Trainmaster/Trainmaster Training Program jobs, they established on September 3, 1985.

Claimant made appropriate and timely claim for one of these jobs on July 3, 1985.

Conrail's Mr. Lee denied the Claimant a requested interview. The Claimant is an eminently qualified and furloughed employee, met the specified requirements and qualifications for the job, was 41 years employed in their Transportation Department, including 21 years in supervisory positions, has an unblemished record of competence, overtime and perfect attendance.

The majority of those hired for these jobs did not meet Conrail's specified requirements and qualifications.

The majority of those hired were new employees, i.e., hired off-the-street.

Conrail rehired no furloughed employees for these jobs.

Claimant further discussed this job on the property on August 5, 1985. Denied on August 9, 1985.

Conrail's Mr. Lee again denied this claim on September 26, 1985. Further appeal was submitted by the Claimant on November 4, 1985, as part of his ex parte submissions, Conrail Docket 19-85-M-0009. The last discussions of this dispute, held on the property, was on December 3, 1985, in Philadelphia, PA.

Finally, on January 3, 1986, the highest designated official denied the claim, without reference to this matter.

Conrail thereby violated Rule 67 and Rule 3 of the BRAC, T-C Division, Agreement of July 1, 1979.

Further, Conrail did injure the Claimant, and other furloughed, employees, by violating the protection of the 'first right of hire,' as provided for in the Northeastern Rail Service Act of 1981 Amendments to the RRR Act, Title VII, in that Conrail willfully failed to afford rights of preferential hiring to the Claimant. Specifically, this Law provides that, 'Conrail employees, as well as other employees entitled to priority, will be placed on the top of the list. Conrail employees that are deprived of employment will have first right of hire.'

Further, that Conrail was discriminantly (sic) motivated in denying this job to the Claimant because of his age of 58 years. The average of the 12 hired was 34 1/2 years.

Conrail thereby violated the Age Discrimination in Employment Act (ADEA). Which Law prohibits discrimination towards any employee because of his age, and Conrail is demonstrably in willful violation thereof.

2. The Claimant desires that his position of Traveling Representative be restored and be allowed to return to it, and that he receive 8 hours

pay for each and every day his job is worked by this Service Employee, commencing with March 11, 1985, and such payment to the Claimant is to continue on a day to day basis until a satisfactory settlement is reached. Payment of claim to be based on a pro rata hourly rate of \$12.844, plus subsequent increases, and that such rate be increased to reflect an annual rate of \$32,500., effective with September 3, 1985.

On that date, September 3, 1985, five (5) current Conrail employees commenced the Assistant Trainmaster/Trainmaster Training Program at \$32,500. annually, and seven (7) new hires, (hired-off-the-street), were paid \$31,000. annually to start."

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 employees 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.

The Claimant was employed by the Carrier as a Traveling Representative headquartered in Watertown, N. Y. His job was abolished on November 8, 1983. Claimant has not worked for the Carrier since. Subsequent to the abolishment of his position, Claimant submitted a Claim alleging that the duties of his position were assigned to DICCS/Yard Clerks in Watertown, N.Y. That case was heard and decided in Third Division Award 27167.

This Board has reviewed the extensive record of this case and is forced to conclude that all of Claimant's grievances emanate from the fact that his job was abolished in November 8, 1983. In Third Division Award 27167, this Board decided that Claimant's position was properly abolished and no Agreement violation occurred in the process. That Award has effectively addressed the issue at hand.

While Claimant in his Submission in this case alleges that Carrier discriminated against him because of age, offered him alternate employment, and then withdrew the offer, and finally violated his rights of first hire as a laid off Conrail employee, the Board finds insufficient evidence to support the allegations. In fact, on August 12, 1987, the Railroad Retirement Board, by letter to Conrail, indicated, based on its analysis, that Claimant did not have first right of hire to an Assistant Trainmaster training program. Claimant is a well-qualified employee with long years of service who wants to work, but cannot obtain or hold a job that he wishes to have. This Board can understand his frustration, but is powerless to grant the instant Claim.

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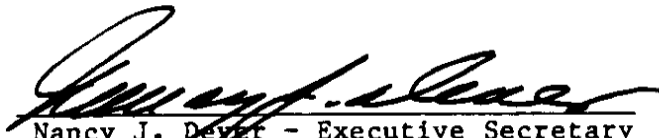
Award No. 27828
Docket No. MS-27575
89-3-87-3-5

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.