

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32104
Docket No. MS-32585
97-3-95-3-518**

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

(Jack K. Beasley

PARTIES TO DISPUTE: (

**(CSX Transportation Company and/or
(CSX Intermodal**

STATEMENT OF CLAIM:

"The carrier violated the agreement by removing my name from the seniority roster, resulting in the loss of my seniority and depriving me of the right to exercise my seniority and claim rights and privileges under section 2, paragraph b, of an agreement signed and effective on August 1, 1966, commonly known and referred to as the Orange Book Agreement.

An award is desired on the reinstatement of my seniority and that I be afforded the compensation, rights and privileges due me under said contractual agreement."

FINDINGS:

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

Parties to said dispute were given due notice of hearing thereon.

CSX Intermodal, hereinafter referred to as Intermodal, was established in 1988 as a broker of intermodal transportation services and is a certificated trucking company. It does not own or operate rolling stock for the purpose of transporting freight by rail in interstate commerce.

With the establishment of Intermodal in 1988, CSX Transportation, hereinafter referred to as the Carrier, ceased its intermodal operations. Jack K. Beasley,

hereinafter referred to as the Petitioner, was employed by the Carrier in an official position being eliminated, and was given the opportunity to exercise his union seniority to positions within the Carrier or accept an official position with Intermodal and sever his employment relationship with the Carrier, forfeiting his union seniority. The Petitioner elected to take an official position with Intermodal.

In September 1989, Transportation Communications International Union, hereinafter referred to as TCU, reached an Agreement with the Carrier providing that individuals who had forfeited seniority to accept an official position with Intermodal could have their seniority reinstated if they so desired.

Intermodal addressed a letter to the Petitioner dated September 14, 1989, advising of the Agreement with the advice that if he desired reinstatement of his seniority, he should sign and date the letter in the space provided and return same to Intermodal no later than October 15, 1989. The Petitioner's response requesting reinstatement was received on October 16, 1989, which was one day after the deadline and, accordingly, his name was not restored to the seniority roster.

The Petitioner personally appeared before the Board at its headquarters in Chicago, Illinois, on February 19, 1997, and presented argument in support of his position that his TCU seniority with the Carrier should be reinstated. The trouble is the Petitioner's argument comes too late as the record before the Board reveals that he slept on his rights through 1995 before coming forward to protest the omission of his name from the TCU roster.

Rule 5(a) of the Agreement between the Carrier and TCU provides in pertinent part:

"The rosters will be revised and posted in July of each year and will be open to protest for a period of sixty (60) days from date of posting; and upon presentation of proof of error by an employee or his representative, such error will be corrected. The Division Chairman and Vice General Chairman will be furnished with a copy of the rosters."

The Petitioner's failure to protest the omission of his name from the 1990 seniority roster within 60 days of its July 1990 posting was tantamount to forfeiture of any and all rights to redress.

As noted above, the Petitioner forfeited his employment relationship with the Carrier in 1988. He has no standing before this Board because he is not an employee of a rail carrier as that term is defined in Section 151, Fifth of the Railway Labor Act, as amended, reading:

"The term 'employee' as used herein includes every person in the service of a carrier(subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission as now in effect..."

The Petitioner was last employed by Intermodal, which is not a carrier by railroad as that term is defined in Section 151, First of the Railway Labor Act, as amended, reading:

"The term 'carrier' includes any express company, sleeping car company, carrier by railroad, subject to subtitle IV of title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad...." (Emphasis added)

This Board's authority and jurisdiction is drawn from the Railway Labor Act, as amended, particularly Section 153. First (i) of that section states in pertinent part:

"(I) The disputes between an employee...and a carrier...growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions...shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the dispute may be referred...to the appropriate division of the Adjustment Board...."

This dispute fails on two counts. First, it is not a dispute between an employee and a carrier. Second, Intermodal is not a carrier as defined and recognized by the

Railway Labor Act; therefore this Board has no jurisdiction over any dispute the Petitioner may have with Intermodal.

In passing, we would also point out that if by some stretch of imagination the Petitioner could be considered an employee of a carrier, this Board would still lack jurisdiction over the dispute for the simple reason that it was not timely filed and handled in the usual manner up to and including the highest officer designated to handle such disputes before bringing same to this Board.

For the reasons discussed herein, this Board concludes that it lacks jurisdiction over this dispute and the claim will be dismissed.

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 9th day of July 1997.