

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32769
Docket No. CL-33755
98-3-97-3-233**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11688) that:

I, Beverly Myers, am hereby filing claim for eight hours pay for each day from May 19, 1986, and continuing due to violation of Rule 1 Scope Rule, Rule 3 Seniority, Rule 8 Bulletined Positions, Rule 10 Reducing forces/not allowing displacements, Rule 17 - not letting taking of temporary vacancies and violation of the Stabilization Agreement of October 17, 1984, Article I, Section 3.

Must be restored to service as I am the senior employee. I am being discriminated against as being kept from my position while junior employees get paid while I do not.

Kindly advise when payment will be made and I will be called in.

Claim is further made that Carrier violated Rule 44 - TIME LIMITS = when the foregoing claim was not timely denied at the first level. It was further violated when Carrier refused to respond to final level conference request."

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 employee 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 were given due notice of hearing thereon.

At the time that the instant claim was filed, June 13, 1986, Claimant had 35 years of service with the Boston and Main Corporation ("B&M"), which through a series of lease transactions occurring in 1987 became an operating property of the Springfield Terminal Railway Company ("ST"). The claim that was filed on June 13, 1986 (reproduced in full above) was denied on July 25, 1986. The denial was timely appealed to Carrier's Director Revenue Accounting. On January 2, 1987 it was denied with the statement:

"This responds to your appeal dated November 3, 1986, concerning stabilization claim of Ms. Beverly Myers. Your appeal is denied. Ms. Myers at all times had sufficient seniority to hold a position on her own roster where there were no picket lines. Since she chose not to [exercise her seniority], this Carrier is not obligated to compensate her. Interestingly, you indicate in your November 3, 1986 correspondence that Ms. Myers filed under Rule 10 C of the Clerical Agreement. That is the Rule under which furloughed employees file their name and address with the Carrier upon furlough. Obviously then, Ms. Myers considered herself furloughed and should have exercised her displacement rights if she desired current employment. That she chose not to do so was her right, but this Carrier should not have to pay for her voluntary decision."

The above contentions have not been effectively refuted by Claimant at any time. Accordingly, the Board must accept them as factual. This being the case, Claimant is not entitled to the relief requested, because when her job was abolished there were other jobs available to her, and for whatever her reasons she chose not to exercise her seniority (at the time 35 years) and displace a junior employee.

The claim is without merit. It will be denied.

AWARD

Claim denied.

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 23rd day of September 1998.