

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33453
Docket No. SG-33875
99-3-97-3-383**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore
(and Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of P.L. Harsh for payment of all time lost when Position 7D43-844 was awarded to a junior employee on March 4, 1996, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, when it did not award this position to the Claimant.” Carrier’s File No. 15(96-178). BRS File Case No. 10219-B&O.

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.

This claim filed on March 30, 1996 concerns an alleged violation of Rule 47 by the award of a position in the Signal Department to an employee junior to Claimant. At

issue is Claimant's appropriate seniority standing in the Signal Department at the time of the posting of the position on February 23, 1996.

The record reveals that Claimant held seniority in Carrier's Track Department since 1980 and began working in the Signal Department on May 23, 1991 while on furlough from the Track Department. Claimant was laid off from the Signal Department on January 18, 1994, and, thereafter, responded to a recall notice in the Track Department where he was working at the time of the posting of the position in issue.

Correspondence on the property establishes that Claimant filed his name for recall to the Signal Department in accord with Rule 32, and Carrier removed his name from the seniority roster after 365 days from the date of his furlough in January 1994 because he did not have three years of service at the time of furlough. There is no dispute that seniority continues to accrue during an employee's furlough.

Pertinent provisions of the Agreement include Rule 47, which provides that assignments are to be made to the qualified applicant with the greatest seniority in the class or by recalling the senior qualified employee furloughed from the class, and Article IV of the September 23, 1986 National Agreement, Termination of Seniority, which states in pertinent part:

"The seniority of any employee whose seniority under the agreement with BRS is established after the date of this Agreement and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority."

The Organization contends that Carrier erroneously removed Claimant's name from the seniority roster under Article IV because Claimant had achieved three years of seniority on May 23, 1994, prior to his being furloughed for 365 days, and was not subject to having his seniority terminated under this provision. It argues that he properly applied for the posted position, and was entitled to receive it under Rule 47 due to his greater seniority than the successful applicant.

Carrier argues that the Organization failed to sustain its burden of proving that Claimant should have received the position because he had no seniority at the time of the posting. It contends that Claimant's seniority was properly terminated in 1995 after

being furloughed for 365 consecutive days under the terms of Article IV because he had not completed three years of service at the time of his furlough. Carrier points out that Claimant suffered no loss of earnings during the claim period because he was working in the Track Department, and notes that Claimant gave up his entitlement to a position in the Signal Department by refusing recall to a different position which would have required forfeiture of his Track Department seniority.

A review of the record convinces the Board that the Organization is correct in its interpretation of Article IV of the 1986 National Agreement. That provision clearly permits termination of seniority of an employee after having been furloughed for 365 consecutive days if that employee "has less than three (3) years of seniority." Since the parties do not dispute that seniority continues to accrue during furlough, Claimant continued to accrue seniority between his furlough on January 18, 1994 and May 23, 1994, at which time he reached the three year seniority mark. Thereafter, he was not subject to termination of seniority under Article IV. The plain language of that provision speaks of an employee who has achieved three years of seniority, not an employee who has engaged in three years of service prior to his/her furlough. Thus, Claimant was entitled to have his seniority considered in response to the February 23, 1996 bid in issue, and Carrier erred in excluding him from consideration

However, with respect to the appropriate remedy, the Board finds that Claimant voluntarily gave up any seniority he may have had in the Signal Department by refusing to accept an offered position, and choosing to protect his Trackman seniority instead. Further, there is no proof in the record that Claimant suffered any loss of earnings from the date of the award of the disputed bid on March 4, 1996, since he had been working in the Track Department throughout the claim period. Accordingly, neither the grant of the position nor any monetary relief is appropriate under the circumstances.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August 1999.