

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35717
Docket No. MS-35542
01-3-99-3-456**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

PARTIES TO DISPUTE: (James F. Barton
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Date my New York dock became effective and not being sent copies of bulletin so I could return to work. Remedy sought: Put to work as Extra Board Clerk at Kansas City with all seniority right restored.”

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.

On January 5, 1990, the Carrier entered into an Agreement with the Mid-Michigan Railroad and the Transportation Communications International Union regarding the rights of employees affected by the acquisition by Mid-Michigan of certain portions of the Carrier's St. Joseph Branch and other trackage. The relevant provisions of the Agreement provided:

“Article II-Employee Conditions

Section 1 Except as otherwise provided herein, an employee affected by this transaction will be afforded the benefits as set forth under the New York Dock Conditions (a copy attached as Attachment 1) or any other protective benefits applicable to said her employees.

Section 2 Employees affected by this transaction shall be afforded the following options:. . .

- (b) Accept employment with Mid-Michigan Railroad Company (see Attachment 3) and transfer to the Mid-Michigan Railroad. . . .

Section 4 An employee hired by the Mid-Michigan Railroad Company and transfers to said Company the following will apply:

- (a) An employee transferring to the Mid-Michigan Railroad Company will have their name and seniority date removed from all Union Pacific seniority rosters.
- (b) An employee transferring to the Mid-Michigan Railroad Company will be considered on a leave of absence from the Union Pacific and may, after a period of twelve (12) months from date of transfer, return to the UP on which they held seniority by bidding on a vacancy advertised under the provision of Rule 11 or by exercising an "accrued displacement" right under the protective period to which the employee is entitled under the New York Dock Conditions (maximum six (6) Years).
- (c) An employee transferring to the Mid-Michigan Railroad Company will be covered by the New York Dock Conditions or any other protective benefits to which the employee is entitled under New York Dock or any other protective benefits applicable to said employee will be assumed by the Union Pacific Railroad Company."

The Claimant opted to work for the Mid-Michigan Railroad and did so commencing on or about May 15, 1990, at which time he received six years of protection under the New York Dock Conditions. In the latter part of 1990 he was furloughed. He did not exercise his "accrued displacement" rights and displace to the Union Pacific Railroad but, rather, remained in furloughed protected status for the full six-year period.

The Claimant testified that his letter of February 15, 1997 set forth the chronology of events which transpired over the six-year period while he was furloughed. Throughout this time a number of events occurred which placed the Claimant on notice that he was required

to proceed in a more formal fashion by actually bidding for a job and filing a grievance in the event it was denied. Notwithstanding, he did nothing other than make a few phone calls to the Organization. As the six year period drew to a close he began to request bulletins, but even then did not submit a bid for a job. It must be noted that during this entire time he remained furloughed from Mid-Michigan and was not an employee of Union Pacific.

It is clear that the Claimant did not follow the express written provisions of Article II, Section (b) of the Branch Line Sale Agreement by either bidding on a vacancy advertised under the provisions of Rule 11 or by exercising an accrued displacement right during the protective period.

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 24th day of October, 2001.