

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39691
Docket No. SG-39413
09-3-NRAB-00003-060062
(06-3-62)**

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Massachusetts Bay Commuter Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Massachusetts Bay Commuter Railroad (MBCR):

Grievance on behalf of R. Barker, for his name to be restored to the seniority roster, account Carrier violated the current Signalmen’s Agreement, particularly Rules 9 and 16, when it omitted the Claimant’s name from the seniority roster, the Claimant’s first knowledge of this omission was when he notified Carrier that he was medically cleared to return to work in August, 2004. Carrier’s File No. MBCR-BRS-14-1104. General Chairman’s File No. R. Baker. BRS File Case No. 13520-MBCR.”

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.

The Claimant last performed service for Amtrak in January 2000 when he incurred an injury at work and did not return. He filed for a retirement disability pension and became eligible for annuity payments on July 1, 2000. Amtrak's records indicate that the Claimant's status was adjusted to "disability retirement" effective November 28, 2000. The Claimant's name did not appear on the January 2002 or January 2003 seniority rosters. When the Massachusetts Bay Commuter Railroad (MBCR) mobilized, it acted upon the January 2003 seniority roster as prepared by Amtrak. The January 2003 seniority roster constituted the lists of employees to be offered employment with MBCR consistent with the requirements of the Operating Agreement.

Effective July 1, 2003, the Massachusetts Bay Transportation Authority was established and assumed responsibilities for the operation of commuter passenger railroad service from Amtrak and hired former Amtrak commuter rail employees. In August 2004, the Claimant contacted MBCR's Signal Department to notify the Carrier that he was medically capable to return to work. At that time, the Claimant was notified by MBCR that his name was not on the seniority roster.

The Organization maintains that the Claimant was left off the seniority roster by mistake and was unaware of this omission due to his medical leave.

The Carrier argues that it acted upon the January 2003 seniority roster of eligible union employees to be offered employment with the Carrier as prepared by Amtrak. The Carrier contends that the Claimant's omission from the seniority roster occurred before it became operational as a Carrier and this should have been addressed.

By virtue of the Claimant's work related injury, the Claimant was out of work initially on medical leave and subsequently on disability retirement from January 2001 until he attempted to report to work with the Carrier in August 2004. During the period of his leave, Amtrak's commuter operations were transferred, along with its former commuter rail employees to MBCR. As a result of the Claimant's leave, he was not at work to review the seniority roster to determine whether he was included and did not learn of his omission until he was medically capable of returning to work in August 2004. Although the Claimant's omission from the seniority roster occurred

while he was still an Amtrak employee, it is undisputed that under the Operating Agreement had he been placed on the Amtrak seniority roster he would have become a MBCR employee and would have been included on the MBCR's roster.

Rule 9 – Seniority Rosters:

- “(a) A seniority roster of employees in each seniority district, compiled by classes, shall be revised each year and posted by March 1 at the headquarters of all employees. Copies of rosters will be available to the employees in each Supervisor's office. Copies of the rosters shall be furnished to the General Chairman and Local Chairman. The rosters will follow the form of the sample rosters (See Supplement).**
- (b) The names, seniority dates, and relative ranking of all employees holding seniority rights under this agreement shall appear on the seniority roster of the particular district on which they hold seniority. Each seniority roster shall state the time limit for the appeal.**
- (c) An employee, or his union representative, shall have ninety (90) calendar days from the date his name first appears on the seniority roster to protest, in writing, to the Division Engineer, his seniority date or relative ranking thereon, except that when an employee is absent from his assignment on account of sickness, temporary disability, suspension, leave of absence or furlough at the time the seniority roster is posted, this time limit shall apply from the date the employee returns to duty. When U.S. Mail is used, the postmark on the envelope will govern in determining compliance with the foregoing time limit.**

If no written protest is made within the ninety (90) calendar day period, no protest shall be entertained, unless the employee's seniority roster date or his relative ranking is changed from that first shown, in which event he shall be permitted to make a protest within ninety (90) calendar days from the date of the change.

- (d) Necessary corrections in the seniority roster shall be made on the next issue; however, when changes are made, the employee affected and the Local Chairman must be notified in writing of the changes within ninety (90) calendar days.**
- (e) Typographical errors and omissions on subsequent rosters may be corrected at any time."**

Pursuant to Rule 9(c) an employee has 90 calendar days from the date his name first appears on the seniority roster to challenge his seniority or relative ranking on the roster except when absent on account of sickness, temporary disability, suspension, leave of absence or furlough. Rule 9(e) provides that "typographical errors and omissions on subsequent rosters may be corrected at any time."

In this instance, the Claimant was omitted from the Amtrak seniority roster due to his medical leave and thus was inadvertently omitted from the MBCR's roster when the Carrier became operational. Accordingly, the Claimant's name shall be returned to the seniority roster.

AWARD

Claim sustained.

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 26th day of May 2009.