

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43037
Docket No. MW-43769
18-3-NRAB-00003-160568**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company (former
(MidSouth Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, starting March 1, 2014 and continuing, the Carrier failed to provide Claimant H. Cooley with proper no-cost medical coverage under the provisions of the Railroad Employees National Health and Welfare Plan following his retirement (System File C 14 04 28/K0414-4304 MSR).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall immediately provide Claimant H. Cooley with the proper no-cost medical coverage under the provisions of the Railroad Employees National Health and Welfare Plan, as well as a refund of all monthly insurance and medical costs beginning from the date of his retirement and continuing until the violation is corrected.”

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 October 13, 1977, the Claimant was hired as a Track Laborer by the Illinois Central Gulf Railroad ("ICG"). The Claimant became an employee of Mid-South Rail Corporation ("MSRC") and then Kansas City Southern Rail Company ("KCS") after KCS obtained control of MSRC in 1993.

Review of past seniority rosters shows that the Claimant's seniority date with KCS or its predecessors (including MSRC) was October 21, 1985 – a seniority date which the Claimant never contested.

The Claimant retired on March 1, 2014.

With respect to early retiree health insurance, in a December 7, 2000 Letter of Agreement with the Organization, KCS agreed:

* * *

“♦ Age 60 with 30 years or early retirees

The company will arrange to provide coverage (without cost to the employee) under Article II to employees who choose to retire at age 60 with 30 years of service until the retiree reaches age 65, or becomes Medicare eligible. This understanding will apply only employees holding seniority on the former MidSouth Rail Corporation (MSRC) and SouthRail (SR) Corporation on January 1, 2001. The provision will not apply to anyone hired after January 1, 2001.”

Although the Claimant retired on March 1, 2014, with the Organization asserting that the Claimant had 36 years of service (which covered his employment with ICG) and was entitled to the insurance coverage, the Carrier denied that coverage to the Claimant. This claim followed.

“The initial question in any contract interpretation dispute is whether clear contract language exists to resolve the matter [and b] ecause the burden is on the Organization, the Organization is therefore obligated to demonstrate clear language to support its claim” Third Division Award 34207. See also, Third Division Award 35457 (“... [b]ecause the Organization has the burden in this case, the first inquiry is whether clear contract language supports the Organization’s position.”).

With respect to the facts in this case – particularly relevant years of service by the Claimant – the December 7, 2000 Letter of Agreement is clear with respect to the Carrier’s obligation to provide the health insurance sought by the Claimant under the above-quoted language. However, that clear language does not support the Organization’s positon, but supports the Carrier’s position.

In the December 7, 2000 Letter of Agreement, the parties clearly agreed that coverage is provided – “... to employees who choose to retire at age 60 with 30 years of service ... [and t]his understanding will apply only employees holding seniority on the former MidSouth Rail Corporation (MSRC) and SouthRail (SR) Corporation ...” With his October 21, 1985 seniority date with KCS or its predecessors (which date the Claimant never contested), when the Claimant retired on March 1, 2014, the Claimant did not have the required 30 years of service with the named carriers as specified and required by the December 7, 2000 letter. Under the relevant language, the Claimant was not eligible for those benefits until a retirement after October 21, 2015. After so many years since acquiring an October 21, 1985 seniority date, the Claimant is now estopped from somehow asserting that he had an earlier seniority date attributable to service with the ICG.

When employees seek to take advantage of retirement benefits, it is their obligation to make certain that they qualify for those benefits before retiring.

AWARD

Claim denied.

Form 1
Page 4

Award No. 43037
Docket No. MW-43769
18-3-NRAB-00003-160568

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 2nd day of May 2018.