

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43144
Docket No. MS-43693
18-3-NRAB-00003-160529**

The Third Division consisted of the regular members and in addition Referee Ademeo Greco when award was rendered.

(G.L. Bishop

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

- “1. In following up with a roster dispute dated 11/4/2008 to the then and current B&O seniority roster, and in review of CSXT Labor Agreement 15-036-07, the grievant has taken issue to the current B&O roster. Specifically, due to Section 5 page 3 of the Labor agreement 15-036-07, “Ties in ranking will be determined first by employment date in Signal Department on the property currently working, and then by the applicable property agreement.” The grievant also takes exception to the following displacement due to the roster being incorrect.
- 2) 1) The grievant is requesting that the current and all subsequent rosters be amended to reflect his proper seniority and position. 2) The attached displacement date 10/22/2015 be invalidated on the grounds that it is an illegal displacement due to this proper seniority position having been wrongly usurped. 3) The grievant is requesting that his position be made whole again and all rights and pay be restored to him.”

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 Carrier in 2007 established a new seniority roster which was published in 2008. Petitioner G. L. Bishop was then tied with another member who had the exact same hire date. The Carrier broke their tie by flipping a coin which the Petitioner lost. That placed him lower on the seniority roster. He did not then protest his seniority ranking.

The Petitioner on October 31, 2015, filed a claim stating that the tie-breaking mechanism was wrong and that his seniority date should be moved up ahead of the member who won the coin flip and who was awarded the higher seniority date.

The Carrier states that the Petitioner did not protest his seniority date in 2008 and that he is estopped now from doing so because his grievance was untimely filed under Rule 35 which requires that grievances must be filed within "60 days after a seniority date is published."

The Petitioner did not do that and, instead, waited nearly seven years before filing his Claim.

His Claim therefore is untimely and is denied.

AWARD

Claim denied.

**Form 1
Page 3**

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Petitioner(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of May 2018.