

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43408  
Docket No. MS-44608  
19-3-NRAB-00003-180029**

**The Third Division consisted of the regular members and in addition Referee Barry E. Simon when the award was rendered.**

**(Mark Skiba  
PARTIES TO DISPUTE: (  
(Illinois Central Railroad Company**

**STATEMENT OF CLAIM:**

- “1. Denial of Original Hire Date as Claimant’s Union Seniority Date For Rule 6 Bidding. Claimant claims his original company hire date as his union seniority date for the purpose of job bidding according to Rule 6 of the Collective Bargaining Agreement.**
- 2. Claimant seeks restoration of his original hire date of July 21, 2008 as his official union seniority date for seniority bidding purposes.**

**Claimant seeks to exercise this seniority date, and displace into a position of his choice, as provided under Rules 6 and 15, of the CBA.**

**Claimant seeks back pay of: the difference between pay for an intermodal clerk, and the lower pay he actually received as a reporting clerk, and material handler, between May of 2013 and the date of this award, if favorable. Claimant cites his May of 2013 properly bid application for an intermodal clerk position, a position that despite his superior qualifications, and ‘senior’ standing, was denied to him in favor of Carrier official Cheryl Clark ‘assigning’ instead, a new ‘junior’ unqualified employee with 6 weeks experience with the railroad to the job.”**

**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 Petitioner began working for the Carrier in a management position on July 21, 2008. Thereafter, he held several management positions, none of which was covered by a collective bargaining agreement. On January 31, 2013, System Director – Network Operations Jim Voytechek issued the Petitioner the following letter:

“Dear Mr. Skiba,

On January 15, 2013 Mr. Nashman and I advised you that your position of Supervisor, Motive Power was abolished effective January 21, 2013. Since that date you have been working with Human Resources in an effort to identify alternate employment within CN.

I am advised that you have not been successful in securing a management position at this time. You are however qualified for a clerical role and it is my understanding that an offer of employment as clerk has been discussed with you and is acceptable to you.

The following conditions will apply:

1. Time spent since January 21, 2013 to February 4, 2013 will be considered as company business and will be paid time.
2. You will establish a Clerical seniority date effective with the first day clerical pay starts in accordance with the Rule 3(a) Agreement.

3. Pursuant to Rule 3(c) of the IC/TCU Agreement, you are subject to a one hundred twenty day (120) probation period during which your application for employment may be rejected which would result in termination of employment with the Carrier.
4. For the purposes of vacation eligibility your service as manager will be considered qualifying service. In the event that you subsequently [sic] again promoted to a management position your vacation will be adjusted so that you are made whole and do not receive more favorable treatment.
5. Your benefits will be administered through the National Healthcare Plan.
6. You acknowledge that there is no relocation or transfer grant of any kind associated with this move.
7. In accepting this offer, you agree to all terms and conditions set forth. You waive your rights to any future claim or grievance process in respect of this event. You further acknowledge that the acceptance of this offer by you is made on a voluntary basis without duress or coercion on the part of the Carrier or any of its representatives.

Upon acceptance of this agreement you will report and mark up to your new work location on February 5, 2013. Please contact Sandi Manestar, Senior Manager Transportation at ... for further details."

On February 24, 2013 the Petitioner sent an email to Ms. Manestar requesting clarification of certain points in Mr. Voytechek's letter. With regard to Point 2, the Petitioner requested a copy of Rule 3(a), and asked about his rate of pay on the starting date and whether there was a bonus plan for this position. He also asked for information on the Union initiation fee and monthly dues, as well as whether Union membership was mandatory. He asked no questions related to Point 7 of the letter. The Petitioner signed this letter, acknowledging his acceptance of its terms, on

February 28, 2013 and began work as an Extra Clerk at the Carrier's Kirk Yard Terminal in Gary, Indiana.

The gravamen of this claim is that the Petitioner insists his seniority date under the Agreement with the Transportation Communication Union should reflect his first date of service with the Carrier. This is clearly contradictory to his concurrence in 2013 that his seniority date would be based upon his first date of paid clerical service. He cannot, at this time, repudiate one element of that agreement. In any case Point 7 of that agreement effectively foreclosed his ability to file any claim in connection with the provisions of that agreement. His claim, therefore, is without merit.

**AWARD**

Claim denied.

**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 18th day of January 2019.