

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43556
Docket No. MW-44872
19-3-NRAB-00003-170262**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (
(Connex Railroad, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s termination of Mr. N. Marderosian on or about July 30, 2015 was arbitrary, unwarranted, without just cause and constituted a violation of the Agreement (System File N77100415 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall return Claimant N. Marderosian to service, provide all vacation and retirement credits and pay all straight, overtime and double time hours beginning July 30, 2015 and continuing until the violation ceases.”**

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 had established and maintained seniority in the Maintenance of Way Department for CSX Transportation, Inc. (CSX), having commenced working for CSX on or about November 14, 2012. Thereafter, the Carrier purchased certain elements from CSX, including the territory where the Claimant was working. As part of the sale, the Carrier reached an Implementing Agreement with the Organization (“Stop Gap Agreement”) which was signed on March 12, 2015. The Stop Gap Agreement expressly provided that where not otherwise stated, the collective bargaining agreement (CBA) between the Organization and CSX (CSXT Agreement) would govern the Carrier’s Maintenance of Way personnel until such time as the parties reached a new CBA.

On or about June 8, 2015, the Claimant began working for the Carrier in its Maintenance of Way Department and resigned from CSX on June 15, 2015. On July 30, 2015, Carrier Supervisor Dietz removed the Claimant from service.

On August 31, 2015, the Organization submitted a claim protesting the Claimant’s dismissal, taking the position that on July 30, 2015, the Claimant had seniority and was not subject to the sixty days’ probation period. The Organization contended that no basis for the removal was given and the Claimant was not provided with the procedures provided in Rule 25 of the CSX collective bargaining agreement.

On September 25, 2015, the Carrier denied the claim, contending that the Claimant was subject to the sixty-day probationary period, and thus, his termination was not subject to protest and appeal under the Agreement. The Organization appealed the denial on October 27, 2015, taking exception to the position that the Claimant was subject to a probationary period. The Carrier declined the appeal on November 30, 2015, stating, in part,

“Company disputes that former employee Maderosian (*sic*) was an employee not subject to the sixty-day probationary period Rule and the alleged facts regarding his hire from CSX and seniority date. In fact, Mr. Maderosian (*sic*) was not positioned on the Seniority Roster pending resolution of a proceeding involving the Organization and his previous employer, CSXT. Because he was subject to the sixty-day probationary period Rule, his termination from employment on or about July 30, 2015 is not subject to protest and appeal under the Agreement.”

Additional appeals and denials followed, and the parties were unable to resolve the claim on-property and it is now properly before this Board for adjudication.

The Organization contends that the Claimant was a seniority employee pursuant to the Stop Gap Agreement negotiated between the Carrier and the Organization. As such, the Organization contends that the Claimant was entitled to the benefits of Rule 25 of the CSX Agreement with the Organization, namely, proper advance notice, fair and impartial hearing, and opportunity to raise a defense, among others.

The Carrier contends that the Claimant was offered employment pending resolution of a proceeding occurring between the Organization and CSX regarding disciplinary action that was imposed by CSX. The Carrier contends that it only agreed to employ the Claimant on the condition that he would not be added to the Seniority Roster until this issue was resolved. As a result, the Carrier contends that the Claimant was still within his sixty-days probationary period at the time of his dismissal on July 30, 2015.

The Carrier's assertion that the Claimant's employment was subject to special provisions due to the pendency of an unresolved disciplinary matter relative to his time employed by CSX, including non-placement on the Seniority Roster, was not refuted by the Organization on this record.

The Stop Gap Agreement negotiated by the parties expressly stated that it was to "remain in effect until the parties negotiate modifications to the agreement." In addition, this Board takes notice that on April 12, 2016, the Carrier and the Organization entered into a collective bargaining agreement, effective March 30, 2015, which by its terms, "supersedes and replaces in their entirety the Implementing Agreement and June 1999 CBA, and becomes the final Collective Bargaining Agreement between the Connex and BMWED with respect to those employees employed to perform track and bridge maintenance of way work on the Line."

As a result, the claim must be denied.

AWARD

Claim denied.

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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 27th day of March 2019.