

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43904
Docket No. SG-44939
20-3-NRAB-00003-180395**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when the award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Illinois Central Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of G.R. Szymoniak, for assignment to the Signal Inspector position in Matteson, Illinois, and to be made whole for the difference in pay for all regular working hours between the Maintainer position he is holding and the Signal Inspector position he desired to displace to, starting on January 12, 2017, and continuing until he is properly placed onto the Signal Inspector position, account Carrier violated the current Signalmen’s Agreement, particularly Rule 19(a) and Section 4 of Appendix O, when on January 12, 2017, Carrier improperly applied prior rights to the Inspector position located at Matteson, Illinois, and denied the Claimant his seniority and displacement rights. Carrier’s File No. IC-BRS-2017-00002. General Chairman’s File No. IC-001-17. BRS File Case No. 15827-IC. NMB Code 128.”

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 basic underlying facts are not in contention. At the time this dispute arose, the Claimant was working as a Signal Inspector headquartered at Griffith, Indiana. On January 4, 2017, the Claimant received a letter from the Carrier informing him that his position would be abolished effective January 12, 2017. Mr. Szymoniak attempted to use his rights as a senior employee under Rule 19, Force Reduction, to displace a junior employee, Greg Asbrand, from his Signal Inspector position at Matteson, Illinois. The Carrier denied the displacement, stating that under Appendix O, Rule 4, Mr. Asbrand was an IC prior rights employee working a position that had existed on the IC prior to the EJ&EW acquisition.

The Organization filed a claim on January 18, 2017, demanding that, as the senior employee, the Claimant be permitted to displace Mr. Asbrand. The Organization contends that prior rights seniority through the years has been watered down due to the Carrier's technological, territorial, and managerial changes to the territories of the positions and the bulletins assigning them, making prior rights difficult to distinguish, if not obsolete altogether. As postings in the record show, these positions are now bulletined as non-prior rights positions. The language of Rule 19 is clear and unambiguous, and the Claimant should have been allowed to exercise his seniority to make the displacement. According to the Carrier, the Claimant, a former EJ&EW employee, tried to displace an IC employee assigned to a position that historically an IC position and warranted the IC prior rights designation. The reporting location for the position was originally at headquarters in Homewood, Illinois. The fact that the reporting location had been moved to Matteson, Illinois, for convenience does not automatically change the assigned territory or duties of the assignment; the bulletined headquarters remained at Homewood. Mr. Asbrand's position was an IC position and it remained so when his reporting location was changed. The work associated with the assignment did not change. The Organization has failed to provide substantial evidence to refute the fact that the assignment was historically considered and maintained as an IC assignment. The Carrier did not violate the Agreement when it refused to allow the Claimant to displace Asbrand.

This case requires the Board to interpret and, if possible, harmonize two provisions in the collective bargaining agreement, Rule 19 and Appendix O. Rule 19 recognizes that senior employees whose positions are abolished as a result of a force reduction have a right to displace junior employees before being furloughed. Rule 19(a) states:

“(a) When forces are reduced senior employees shall be retained in service. No employees holding seniority in the job classifications above that of Assistant will be furloughed unless all assistants have been furloughed. *When positions are abolished, an employee affected, if not the junior employee, must displace an employee with less seniority holding a bulletined position.* The affected employee failing to exercise such rights of displacement will forfeit seniority and will be considered as having resigned from the service of the company.” (Emphasis added.)

Appendix O, negotiated when the Carrier acquired the EJ&EW railroad, established principles for integrating employees from the existing IC territory and employees from the former EJ&EW territory into a single workforce. Section 4 dovetails EJ&EW employees’ seniority with that of IC employees. Section 4 also guarantees that former EJ&EW employees “will have prior rights to signal maintainer and inspector positions located on the former EJ&EW territory.” Similarly, current IC employees have prior rights to signal maintainer and inspector positions “on the IC as it existed prior to this Agreement.”

APPENDIX O

.

2. On the effective date of this Agreement, all EJ &EW BRS-represented positions will be abolished and re-established as equivalent IC positions. All employees occupying EJ&EW technician positions will be transferred to IC inspector positions on the effective date of this Agreement.

.

4. Employees subject to Paragraph 2 will forfeit all EJ&EW seniority and their seniority will be dovetailed with the seniority dates held by employees on the IC. *Former EJ&EW employees will have prior rights to signal maintainer and inspector positions located on the former EJ&EW*

territory. Current IC employees will have prior rights to signal maintainer and inspector positions working on the IC as it existed prior to this Agreement. For IC prior rights gangs, the dovetailed seniority as provided for above will apply. (Emphasis added.)

Together, Rule 19 and Appendix O, Rule 4, provide for senior employees whose positions have been abolished to displace junior employees *except* when a junior employee has prior IC or EJ&EW rights to the position he or she holds. The record includes the original bulletin for the position in dispute, Bulletin No. 96-15. It is designated an IC position. Ms. Asbrand was an IC employee, while the Claimant is a former EJ&EW employee. Therefore, it would appear that Asbrand had prior rights to the position and that, under Appendix O, Rule 4, he could not be displaced by the Claimant. The Organization argues, however, that the “prior rights” principle has been eroded over time, as witnessed by the fact that new positions are bulletined without any prior rights designation. The position at issue, however, *was* bulletined as an IC prior rights position.

Moreover, the Board concludes that the change in reporting locations from Homewood, Illinois, to Matteson, Illinois, did not change the nature of position 96-15 as an IC prior rights position. The assigned headquarters remains Homewood; only the reporting location has changed.

The Organization’s position that prior rights have been eroded over the years to the point of being obsolete is not persuasive. Appendix O remains part of the parties’ Agreement. The Board is charged with enforcing the Agreement *as written*. To do anything else, as the Organization suggests, would require the Board to modify the existing language of the Agreement, which is outside the scope of its authority. If “prior rights” have indeed become obsolete, the parties need to renegotiate the Agreement to eliminate Appendix O. As long as it remains in the Agreement, the Board must give it meaning. In this case, the position into which the Claimant attempted to displace was an IC prior rights position, occupied by an IC employee. Under Appendix O, Rule 4, that employee was safe from displacement for a former EJ&EW employee. Accordingly, the Claim is denied.

**Form 1
Page 5**

**Award No. 43904
Docket No. SG-44939
20-3-NRAB-00003-180395**

AWARD

Claim denied.

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 28th day of January 2020.