

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44380  
Docket No. MW-45804  
21-3-NRAB-00003-200087**

**The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to publish the correct July 25, 2015 track foreman seniority date of Mr. M. Matthews in its 2017 Track Subdepartment Seniority Roster (System File RI-I 812B-801 BRC).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now correct its 2017 Track Subdepartment Seniority Roster to reflect Claimant M. Matthews’ track foreman seniority date as July 25, 2015.”**

**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.

This dispute concerns a Claimant who had obtained a seniority date in the track foreman seniority class of the Carrier's Maintenance of Way Department on June 25, 2015. On March 31, 2017 the Claimant was issued a notice of discipline concerning an event occurring on March 30, 2017. An Investigation to develop facts and determine responsibility in connection with the alleged rule violation was scheduled for April 28, 2017.

On April 28, 2017, the parties assembled for the formal investigation, but prior to commencement, the parties were able to negotiate a settlement of the dispute. The terms of the settlement were set forth in writing and the last two (2) sentences in that settlement agreement are the basis of this Claim. They read:

“...I hereby waive my rights and accept full responsibility and original discipline assessed me on March 31, 2017 (30-day suspension).

I also understand that as a result of this waiver, I will not be eligible to bid on a Track Foreman or Track Inspector position until March 31, 2018.”

Shortly thereafter, in May 2017, the annual Track Department Seniority Roster was published showing the Claimant's track foreman seniority date as 7/25/15.

The proverbial fly in the ointment came to light when the next Seniority Roster was published in May 2018. The Claimant was not listed as having a Foreman seniority class standing. The Organization filed a claim on Claimants behalf that the parties have not resolved. The claim is now properly before this Board for adjudication.

In the Carrier's original “Advice of Notice of Discipline” issued on March 31, 2017, the first sentence of the notice reads: “You are hereby issued a thirty (30) day suspension and are disqualified as a Track Foreman, effective at 3:00 pm on 3/31/2017...”

That language differs from the language of the final waiver signed by the Claimant and negotiated with the Organization on April 28, 2017 that doesn't “disqualify” the Claimant as a Track Foreman in perpetuity, but merely bans him from exercising his Track Foreman seniority for a period of one (1) year.

The difference between the original Advice of Notice of Discipline issued on March 31, 2017 and the Final Waiver of Investigation creates an ambiguity; an agreement is said to be ambiguous where, as here, plausible contentions may be made for conflicting interpretations. Where, as here, doubt exists, any ambiguity not removed by any other rule of interpretation may be removed by construing the ambiguous language against the party who proposed it.

Moreover, the record in this dispute contains written statements from the Organization Representatives who negotiated the final settlement attesting to the fact that the Claimant's retention of his seniority date as a Track Foreman was discussed and agreed to remain intact. The Carrier's Manager who negotiated the waiver did not submit a rebuttal to their statements.

After careful consideration of all the evidence on the record and the arguments made in the Parties' submissions, the Board determines that the Claim must be sustained.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 13th day of April 2021.