

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44798  
Docket No. SG-46212  
22-3-NRAB-00003-200621**

**The Third Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Consolidated Rail (Shared Assets)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of B.K. Lutomski, for assignment to Position S5261 with compensation at his respective time and one-half rate of pay for all hours worked outside the regularly assigned hours of Position S5261 starting on March 25, 2019, and continuing until the Claimant is placed on Position S5261, and his seniority date restored; account Carrier violated the current Signalmen’s Agreement, particularly Rule 2-C-1(b), Appendix B, and Appendix S Reference 17, when on March 22, 2019, Carrier denied the Claimant his displacement rights and improperly removed his seniority. Carrier’s File No. C-19-CR-057-2. General Chairman’s File No. C-19-CR-057-2. BRS File Case No. 16206-CR(SA). NMB Code No. 117.”**

**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 record in this case indicates that on February 28, 2019, the Claimant, a Signal Maintainer, exercised seniority by displacing Signal Maintainer T. Simpson from position S6065. Effective March 11, 2019, the Claimant's position was abolished; however, the Claimant was initially permitted to remain on that position; however, soon thereafter the Claimant exercised his seniority to Assistant Maintainer position S6601. By letter dated March 22, 2019, Signal Engineer Vant advised the Claimant that since the Claimant exercised his seniority to a lower classification, he forfeited his seniority.

On May 3, 2019, the Claimant's Local Chairman submitted the above continuing claim to C&S Supervisor O'Malley predicated on the position that under Rule 2-C-1, the Claimant was not precluded to exercise seniority to a lower class and that the Carrier's action prevented the Claimant from exercising seniority held by a junior employee. When no response was forthcoming from the Supervisor, the General Chairman, by letter dated July 18, 2019, wrote the Director-Labor Relations and requested that the claim be allowed as presented on the basis that the initial claim was not denied within 60 days as required by Rule 4-K-1. By email dated August 27, 2019, the Director-Labor Relations advised the General Chairman that the Organization's demand for payment of the claim on a time limit basis was "without merit and agreement support and is declined".

Initially, the Board notes that the record is clear that Supervisor O'Malley never responded to the claim submitted on May 3, 2019 in violation of Rule 4-K-1, which states in the event of such failure to timely deny the claim, the rule provides that the "claim shall be allowed as presented." In reaching a decision in this case, the Board has also taken note of the fact that the subject claim was appealed solely on the basis of the time limit violation and that under long standing arbitral precedent, any continuing liability stopped on August 27, 2019, when the Director-Labor Relations denied the claim.

In fashioning an appropriate remedy in this case, the Board has also considered documentary evidence presented that from March 25 to May 14, 2019, the Claimant was off on a medical leave of absence and that on May 17, 2019, the Claimant voluntarily exercised his seniority to a Signal Maintainer position and there is no indication that the Claimant desired or was prevented from exercising seniority to any other position.

Based on its review of the entire record, the Board finds that any Signal Maintainer seniority that the Claimant had should be restored back to the date prior to February 28, 2019. Looking at the period from March 22, 2019 to March 25, 2019, prior

to the Claimant going on a medical leave of absence, the Board rules that the proper remedy is to allow the Claimant 12 hours pay at the Signal Maintainer rate. Relative to the period from the Claimant's return from the medical leave of absence, until the claim was denied by the Director-Labor Relations, the Board finds that the Claimant suffered no additional monetary loss. The Board must emphasize that its decision in this case is based on the particular facts and circumstances herein and should not be considered as precedent in the handling of future similar claims.

**AWARD**

Claim sustained in accordance with the Findings.

**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 27<sup>th</sup> day of September 2022.