

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44821
Docket No. SG-46622
23-3-NRAB-00003-210154**

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX TRANSPORTATION, INC.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly C&O, Chesapeake District):

Claim on behalf of all Chesapeake & Ohio Chesapeake District signal employees, for Carrier to correct Signal Manager C.A. Kordenbrock’s seniority date to July 3, 2019, account Carrier violated the current Signalmen’s Agreement particularly Uniform Rule (E), when on July 3, 2019, it permitted Ms. Kordenbrock to displace a Signal Foreman position outside the provided time limit for returning to duty after a leave of absence. Carrier’s File No. 19-80940. General Chairman’s File No. 19-26-CD. BRS File Case No. 16291-C&O(CD). NMB Code No. 64.”

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 case involves the return of a former manager to the signal craft. On June 19, 2019, C. A. Kordenbrock was removed from a management position, with the option to return to the craft where she maintained her seniority, and she displaced to a Signal Foreman position on July 3, 2019.

The Organization submitted a grievance on August 28, 2019, contending that the Carrier violated Uniform Rule 7 of the applicable agreement when it permitted Ms. Kordenbrock to displace 19 days after dismissal from the official position, rather than within 10 days as required by the rule. It alleged that there had been no requested extensions granted, and it requested that the Carrier remove Ms. Kordenbrock from all foreman and lead rosters, and place her at the bottom of the signalmen's roster.

The Carrier denied the grievance, stating that Ms. Kordenbrock was required to take a medical examination to determine her fitness for a craft position prior to being permitted to return to the craft. It asserted that, after the physical, Ms. Kordenbrock was released for full duty on June 27, 2019, and that, because she would not have been allowed to displace back to the craft until being found medically fit to do so, her displacement was timely under Uniform Rule 7.

The Organization submitted an appeal, pointing to the portion of Uniform Rule 7 which provide that "except when prevented by sickness or disability, employees failing to return to duty within ten calendar days after expiration of his leave of absence will lose their seniority rights unless an extension has been obtained in writing." It argued that no sickness or disability was reported, that no extension had been requested or allowed, and that Ms. Kordenbrock did not attempt to make a displacement within 10 days, despite having been made aware of the requirement to do so. The Organization contended that she had voluntarily relinquished her seniority in those circumstances.

The Carrier denied the appeal, again noting that Ms. Kordenbrock was blocked from making a displacement until being released for duty by its medical department. It stated that the General Chairman had been advised of those circumstances, and that he did not question them. The Carrier reiterated its position that the bump clock did not begin until Ms. Kordenbrock was medically cleared to return to service.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the agreement in question is clear and unambiguous, and that there was no basis for the Carrier to permit Ms. Kordenbrock more than 10 days from the termination of her management position to displace back to the craft. The Carrier, on the other hand, reiterates that Ms. Kordenbrock did everything within her power to exercise her seniority and did so within 10 days of being released to return to the craft, and it posits that the Organization has not met its burden of proving an agreement violation in those circumstances.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we are unable to find that the Organization has established a violation of the cited agreement. While the rule requires an employee to exercise seniority within 10 days of the expiration of a leave of absence, we do not find that Ms. Kordenbrock exceeded that period under the specific facts presented here. It appears to us from this record that she was prevented from exercising her seniority any sooner than she did, and that when the restrictions were lifted, she made a timely exercise of seniority. It is fundamental that the Organization bears the burden of proving that the challenged action is contrary to the applicable agreement provisions, and we find that the specific facts here are insufficient to meet that burden. Therefore, we must deny the claim.

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 21st day of December 2022.