

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44830
Docket No. SG-46661
23-3-NRAB-00003-210678**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of P. Belmonte, V.M. Sanchez, and T.M. Sellers, for the restoration of seniority on the IHB Gibson District BRS Seniority Roster, account Carrier violated the current Signalmen’s Agreement, particularly Uniform Rules 15, 20, and Side Letter 19 to Appendix R, when Carrier improperly removed the Claimants from the 2019, IHB Gibson District BRS Seniority Roster without the Agreement of the General Chairman. Carrier's File No. G-20-IHB-304-1. General Chairman's File No. G-20-IHB-304-1. BRS File Case No. 16505-CSX(N). NMB Code No. 32.”

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 claim herein originated when the Carrier sent the 2019 Gibson Seniority District roster of Signal Department employees to the signal employees and the General Chairman of the Brotherhood of Railroad Signalmen. As required by the

parties' Agreement, this roster was issued on March 1, 2019. The three Claimants in this case were not listed on the seniority roster. The Agreement directs that protests to the seniority roster must be made within twelve months. The Organization made a timely objection to the removal of Claimants by letter dated October 14, 2019.

With the transfer of Conrail assets to CSXT and Norfolk Southern, the Organization entered into an agreement with CSXT regarding the IHB employees who were working in Gibson Yard under Conrail's Agreement with the Organization, even though they were IHB employees. That agreement, Appendix R – Side Letter No. 19, dated December 14, 1998, stated:

The IHB employees represented by BRS who have heretofore been covered by the Agreement between Conrail and BRS will be subject to the new CSXT Northern Agreement. These employees will have their names included on the CSXT Northern West Regional Seniority Roster and will have prior rights to positions on former Conrail Seniority District 22.

Employees affected by Side Letter No. 19 were those who were working in Gibson Yard as of the date of the agreement. As a consequence of this agreement, those employees are entitled to work on any property previously covered by the Conrail Seniority District 22, which included properties owned and operated by CSXT, and could bid on jobs on both the Carrier and CSXT.

It is undisputed that Claimants Belmonte, Sellers, and Sanchez were hired by the Carrier in June 2007, March 2010, and June 2010, respectively. Accordingly, they did not hold prior rights under the 1998 agreement. It is also undisputed that Claimants, and four other signal department employees, were furloughed by the Carrier on October 11, 2013. The Organization and CSXT reached an agreement allowing these seven employees to be hired by CSXT as if they were new employees, but granting them seniority dates consistent with their IHB seniority. One of these employees, who is not among the Claimants herein, was not hired by CSXT.

When the Carrier recalled the furloughed employees, or when a vacancy was posted to which they could return, Claimants continued to work at CSXT. The other four employees returned to positions on the IHB. Because there was disagreement between the Carrier and the Organization as to the right of employees hired after the 1998 agreement to work for both railroads, the Carrier did not remove Claimants'

seniority. When that disagreement was eventually resolved, the Carrier removed Claimants from the 2019 seniority roster.

To prevail in this case, the burden is upon the Organization to show that Claimants had dual seniority that enabled them to work on one railroad even though work was available to them on the other. That burden has not been met. Although Claimants were permitted to work for CSXT, or any other employer, while they were furloughed, they had an obligation to return to work for the Carrier when they were recalled from furlough. The consequence for not doing so is the forfeiture of their IHB seniority pursuant to Uniform Rule 16. The fact that CSXT and the Organization agreed to afford them seniority dates based upon their IHB seniority is not relevant. The Carrier was not a party to that agreement.

We do not agree with the Organization's argument that the Carrier unilaterally removed Claimants from the roster in violation of Rule 20, which states:

Continuously updated rosters will be made available to all employees through the Carrier's systems, and a snapshot of the seniority rosters listing all employees will be made available electronically to all employees and the General Chairman by March 1st of each year. Rosters will show the name, birth date, identification number, seniority datum, prior rights district where applicable, and relative ranking in each seniority class of each person holding seniority. A seniority date shall be protested in writing to the Highest Designated Carrier Officer with copy to the General Chairman within 12-months from the date posted. Changes to seniority rosters may be made only by agreement between the Highest Designated Officer and the General Chairman or their designees.

A reading of this provision makes it clear that it is the responsibility of the Carrier to keep the seniority rosters to date. This involves both additions and deletions from the roster as employees are hired or terminated. It is the Board's conclusion that these changes do not require the consent of the General Chairman, and there has been no showing of a contrary practice. When an employee or a representative of the Organization believes there has been an error, a protest is filed with the Highest Designated Carrier Officer. The last sentence of Rule 20 prohibits the Carrier from unilaterally making any corrections as the result of a protest. The

protest must be resolved by agreement between the Highest Designated Officer and the General Chairman, or their designees.

It is the Board's conclusion that the removal of Claimants from the seniority roster was not in violation of the Agreement.

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.