

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44908
Docket No. SG-45981
23-3-NRAB-00003-200566**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Alton & Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern:

Claim on behalf of R.L. Pratt, for compensation for all time lost, restore his medical benefits, his seniority, and pay his monthly Railroad Retirement contributions and allow him to exercise his seniority for violating the Alton and Southern Agreement, specifically Rules 35 and 48, for not allowing him to exercise his seniority after being terminated as a manager and not allowing him an Investigation. Carrier’s File No. 2019006. General Chairman’s File No. S-35, 48-1794 A/S. BRS File Case No. 16148-A&S. NMB Code No. 173.”

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 Claimant in the instant case was a former signal employee who had most recently been employed by the Carrier in a manager role. The Claimant was terminated from a Manager position for an alleged EEO violation. Following his dismissal, he attempted to exercise his seniority to move into the craft.

In a letter dated March 19, 2019, the Carrier informed the Claimant that he was dismissed in all capacities and advised him that he was prohibited from returning to any agreement craft and would not be considered for any future employment. By letter dated March 21, 2019, the Carrier advised the Claimant that his request for exercising his seniority was denied and he was ineligible to return to the company in any capacity.

In a letter dated April 10, 2019, the Organization filed a continuous claim on behalf of the Claimant. The Carrier denied the claim in a letter dated May 3, 2019. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier violated the current Signalmen's Agreement, particularly Rules 35 and 48, when it failed to provide the Claimant an Investigation to refute the Carrier's allegations. Rule 35 provides, in part:

RULE 35 – PROMOTION TO OFFICIAL POSITIONS.

(a) Employees promoted to official positions with the Carrier or with the Carrier's parent company or subsidiaries, and employees accepting positions with the Brotherhood of Railroad Signalmen, will be given a leave of absence for the time they are on such position and will, subject to the provisions contained in paragraphs (b) or (c) below, as may apply, retain and continue to accumulate seniority in all classes where seniority is established. In the event such employees voluntarily relinquish such positions, they will have a right to bid only on new positions or vacancies. Employees who are released from such positions may, within thirty (30) days after such release, exercise a displacement right in accordance with Rule 27.

The Organization contends that Rule 48 of the current Signalmen's Agreement allows for an employee to be granted a fair and impartial Hearing within three calendar days. The Organization contends that the Claimant has a right to face his accuser in an Investigation Hearing.

The Organization contends that the Claimant maintained his seniority rights by paying his retention fee and therefore, the Claimant is the only one responsible in forfeiting his seniority rights, as stated in First Division Award 28082. The Organization contends that the Claimant notified the Carrier of his intent to make his displacement on Signal Gang #8801 before the Carrier sent its second letter.

The Carrier contends that the Claimant engaged in behavior that is prohibited by Carrier's EEO policy. The Carrier contends that the Organization does not deny or refute that the Claimant engaged in these behaviors and violated the policy.

The Carrier contends that the Claimant was a non-agreement manager at the time of his termination and thus, had no right to exercise his seniority and no right to an investigation. Arbitration precedent and court holdings make clear "once the employee relationship is irrevocably ended for cause, there is no longer any valid basis upon which the employee's seniority can operate." *See*, First Division Award 29751.

The Carrier contends that the Claimant was dismissed from his management position, not released, and thus he had no right to exercise rights under Rule 35 of the Agreement and was not entitled to the Investigation referenced in Rule 48. The Carrier contends that the Organization cannot point to any language that would require the Carrier to hold an investigation prior to terminating a non-agreement manager. The Carrier contends that since the Organization has failed to show how the Agreement was violated, this Board should decline the claim.

There is some mixed authority on the issue of under what circumstances an employee who has accepted promotion to a non-agreement position maintains the right to return to an agreement position. However, the great weight of authority holds that the employee only retains his right to re-enter the bargaining unit so long as he "continues to be a non-employment employee in good standing." Award 112 of PLB 5514. There, the Board wrote, "Once he has been severed from that position for disciplinary reasons, and therefore no longer in Carrier's employ, he ceases to retain rights to re-bid under the provisions of the agreement's seniority provision." (internal citation omitted.)

The evidence shows that the Claimant did not voluntarily relinquish nor was he released from his official position, and thus, the provisions of Rule 35 did not apply to him after he was dismissed for disciplinary reasons. Thus, his termination severed any seniority rights he had to return to the bargaining unit. Accordingly, the claim is denied in its entirety.

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 April 2023.