

AWARD NO. 496
Case No. 496

Organization File: GLS602419
Carrier File: 19-00161

PUBLIC LAW BOARD NO. 7163

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to allow Mr. D. Wheatley to exercise his seniority in the Maintenance of Way Department after returning from a supervisory position beginning on February 11, 2019 and instead dismissed him without written notice or affording him a fair and impartial hearing as required by Rule 25 (System File GLS602419/19-00161 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Wheatley shall be reinstated to service ‘... with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage, rent or other financial loss suffered as a consequence of this case. This would not only serve to reimburse Mr. Wheatley for his loss of wages but would also serve to protect the integrity of the agreement. ****’ (Employees’ Exhibit ‘A-1’).”

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The facts of this case are not in dispute. Claimant had established and held seniority within the Carrier's Maintenance of Way Department with a seniority date of October 2, 2000. On November 8, 2004, Claimant was promoted to Director of Track in Corbin, Kentucky, a position exempt from the Agreement. On February 11, 2019, the Carrier dismissed Claimant from that position. On February 25, 2019, Claimant attempted to make a displacement, but the Carrier denied the request on the basis that he had already been dismissed.

In the instant claim, the Organization asserts that the Carrier violated the parties' Agreement by terminating Claimant's seniority. It also argues that Rule 25 of the parties' Agreement required that Claimant be afforded a discipline hearing before being dismissed. As this case involves asserted Rules violations, the Organization bears the burden of proof.

The Organization first notes that Rule 4--Seniority specifically stipulates that employees promoted to official, supervisory or exempt positions retain and continue to accumulate seniority rights. Further, the Organization states, Section 4 of that Rule, details the mutually agreed upon exceptions to this principle, such as a delinquency in payment of the appropriate monthly fee, not to exceed monthly union dues. The Organization points out that that unilateral termination of an employee promoted to a supervisory position for alleged dishonesty, the reason the Carrier asserted for Claimant's termination, is not an included exception.

In addition, the Organization points out, Section 2 of Rule 4 specifically provides, in subsection (a)(5), that an employee may exercise seniority to a position for which he is qualified **when returning from a supervisory or official position.** This language, the Organization stresses, draws no distinction between an individual who vacates a position voluntarily and one like Claimant, who unfortunately does so involuntarily. The Organization points to Third Division Award 35868, involving this Organization and another carrier, where the Board stated:

Although the Carrier distinguishes between vacating a position voluntarily versus involuntarily, Rule 22 (of the agreement at issue) does not support this view. (It) explicitly states, ‘Employees retaining seniority who vacate an official, supervisory or excepted position for any reason, whether with the Company or the Brotherhood, may return to their former position or exercise rights . . . As written, therefore, Rule 22 makes no distinction based on the manner in which a position is vacated. . . (and) provides no exception for dismissal for cause.’”

The Carrier responds that overwhelming arbitral precedent, which it provided to this Board, supports the opposite conclusion, and that Claimant was entitled to neither a displacement nor a disciplinary hearing. In particular, the Carrier relies upon Award Nos. 90 and 99 of PLB 7584, involving this Carrier and another organization. There, the applicable agreement language, like that at issue here, provided that employees promoted to exempt positions retained their seniority rights so long as they paid the applicable fees.

The agreement at issue in the PLB 7584 cases cited by the Carrier also specifically provided that such promoted employees could exercise their agreement seniority rights “in the event their positions are abolished or they are demoted”. The claimants in those two cases, like Claimant here, had been dismissed from their management positions. Therefore, the Board concluded that the clear agreement language, which set forth the circumstances in which a displacement could be made, did not apply to a dismissed employee. That Board also concluded that nothing in its agreement language required that an investigative hearing be provided to an employee dismissed, not from an agreement-covered position, but from a management position not covered by the agreement.

Neither party has presented awards involving both of the instant parties or interpreting the specific Agreement language at issue here. The award cited by the Organization, which held that

a dismissed management employee had displacement rights, relied upon specific agreement language providing that employees who “vacate” a supervisory or exempt position “for any reason” may exercise displacement rights. That controlling language, which that Board interpreted as drawing no distinction between voluntary and involuntary (that is, dismissal) vacating of a position, is not present in this Agreement.

Rather, Rule 4, Section 2 of the instant Agreement, which lists the specific circumstances under which an employee may exercise seniority to a position for which he is qualified, provides, as applicable here, that an employee may do so when his position is abolished or he “is returning from a supervisory or official position”. We agree with the Carrier that the Organization has not met its burden of proving that an employee who has been dismissed in all capacities should be considered “returning” to an Agreement-covered position.

As stated in NRAB First Division Award 26725, the instant situation does not involve an exempt employee attempting to return to the bargaining unit while still employed by the Carrier. Rather, the question is whether a dismissed exempt employee has Agreement rights which survive his termination. As did the First Division, we conclude that Claimant no longer held employment status with the Carrier, and therefore should not be considered attempting to exercise his seniority rights to “return” to an Agreement position. See also NRAB Third Division Award 36075, which explains that as the claimant’s employment had been severed, he no longer had any seniority to exercise. We agree with this conclusion.

As for the Organization’s further argument that the Carrier should have afforded him a disciplinary investigation pursuant to the Agreement, there is extensive arbitral precedent for the conclusion that an arbitration board such as this one lacks jurisdiction over any dispute concerning

an exempt employee's dismissal. Therefore, for the foregoing reasons, the claim must be dismissed.

AWARD: Claim dismissed.

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Jacalyn J. Zimmerman
Neutral Member

A handwritten signature in black ink, appearing to read "Ross Glorioso".

Ross Glorioso
Organization Member

A handwritten signature in black ink, appearing to read "John Nilon".

John Nilon
Carrier Member

Dated: 3/14/2023