

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (David L. Horner  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "(1) Whether David L. Horner's name was properly removed from Engineers Roster List about November 1989;
- (2) Whether the Engineers Roster List was properly posted and publicized to roster list members as set forth in the Collective Bargaining Agreement;
- (3) Whether David L. Horner otherwise received requisite notice of his removal from the Engineers Roster List as provided by, or required by, the amicable collective bargaining agreement;
- (4) Whether David L. Horner has lost or otherwise forfeited all of his seniority as an engineer with Conrail Corporation by virtue of his dismissal from SEPTA as a trainman in or about February 1987;
- (5) Whether the Implementing Agreement of October 8, 1982 between the United Transportation Union (T), Southeast Pennsylvania Transportation Authority, and Consolidated Rail Corporation is effective and binding upon David L. Horner with regard to his removal from the roster list;
- (6) Whether David L. Horner was improperly classified or considered an Article II transfer employee as opposed to Article VII furloughed employee of Conrail under the aforesaid Implementing Agreement by the Consolidated Rail Corporation at the time of his removal from the Engineers Roster List;
- (7) Whether David L. Horner was improperly stripped or deprived of his Conrail seniority rights because of a misinterpretation of his status under the aforesaid Implementing Agreement by the Consolidated Rail Corporation."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Petitioner originally was employed by Conrail. Subsequently, he was employed as a Passenger Attendant by SEPTA pursuant to an Implementing Agreement between SEPTA and Conrail established by an Arbitration Award dated October 2, 1982. Later, Petitioner was discharged from SEPTA employment on charges of misconduct occurring in February 1987. His discharge from SEPTA was upheld in Award 104 of SBA No. 960, released June 26, 1987.

Following his discharge from SEPTA, Petitioner attempted to exercise his Conrail/Amtrak train service seniority to an Amtrak assignment. Upon learning that Petitioner had been dismissed from SEPTA, Amtrak advised that he could not work for Amtrak inasmuch as his dismissal from SEPTA also terminated his Conrail seniority. The ensuing grievance on this matter was denied in Award 1, PLB No. 4499, dated May 26, 1988, holding:

"That Claimant Horner forfeited his CONRAIL seniority when he was dismissed by SEPTA is not challenged in this case. Therefore, inasmuch as Claimant Horner did not possess CONRAIL seniority in June 1987, when he sought employment with AMTRAK, he had no contractual right to such AMTRAK employment and no violation of the November 8, 1982 Section 1165 Agreement occurred when he was denied employment by AMTRAK."

Petitioner also had been carried on a Conrail Engineers' seniority roster. He now claims that his name was improperly removed from that roster sometime in November 1989. It is this claim (with attendant demands for reparations) which is now before this Board.

Carrier contends that when Petitioner was discharged for cause by SEPTA, by the language of Article V of the Implementing Agreement, he was ineligible for return to Conrail employment in any capacity and it was proper to remove his name from all rosters. Carrier indicates that while Petitioner's name was included on the 1988 Engineers' roster it was done so in error and when the 1989 roster was posted in May 1989 it was not included. The 1989 roster was open for protest until July 30, 1989. Claimant did not submit his protest until March 20, 1990, thus, it is time barred.

Petitioner responds that while it may be true that Conrail employees transferring to SEPTA pursuant to Article II of the October 8, 1982 Implementing Agreement are ineligible to return to Conrail service following a discharge for cause from SEPTA, this does not apply in his case as his employment with SEPTA did not occur pursuant to Article II, but instead Article VII. Conrail employees securing SEPTA employment under Article VII are considered furloughed Conrail employees and exercise of their Conrail seniority (when no longer employed by SEPTA) is not restricted in the same manner Article V restricts those transferring under Article II.

With regard to the timeliness of his roster protest, Petitioner claims, inter alia, that the rosters were not posted as provided in the Agreement and/or that he was not afforded requisite notice that his name was to be removed from the roster, thus, he was unable to acquire knowledge that his name had been stricken from the list. In any event he instituted a timely grievance upon acquiring knowledge of the omission, thus, his claim is not time barred.

There is no question that the protest concerning the omission of Petitioner's name from the 1989 Engineers' roster was outside the time limits established in Article S-f-1(o) of the Conrail/UTU(E) Schedule Agreement. As such it cannot be considered. With regard to Petitioner's contention that the roster was not properly posted as provided in the Agreement, causing him to be unaware that his name had been deleted, all that we have on this point is unsupported allegation. Petitioner has not offered a scintilla of evidence in support of improper posting or that he timely attempted to inspect the roster and could not do so because it was not properly posted.

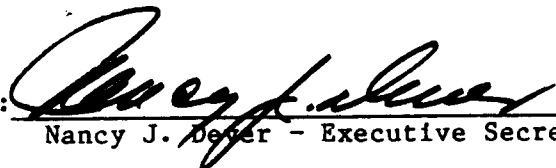
Accordingly, Petitioner's claim is procedurally defective. This Board is required to dismiss it as untimely.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. DeGer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1991.