

Form -1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24236
Docket No. 43881
93-1-92-1-U-1669

The First Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Union Pacific Railroad Company
PARTIES TO DISPUTE: (
(Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

"Does Letter Agreement No. 1 to the Union Pacific-MKT Merger Agreement dated December 9, 1998, and agreed-to interpretation dated January 24, 1989, taken together, clarify the intent of Letter Agreement No. 1 to the extent that they allow the Carrier to reduce or discontinue supplemental extra boards in order to reduce engineers from the engineers' working list to demoted status?"

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 employe 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 significant events that ultimately caused the instant dispute to arise began on January 16, 1990, when Arbitrator John B. LaRocco ("LaRocco") issued an Award and Order on the following question:

"Does Letter Agreement No. 1 to the Union Pacific-MKT Merger Agreement dated December 9, 1988, prohibit the Carrier from reducing or discontinuing supplemental extra boards in order to reduce engineers from the engineers' working list to demoted status?"

The LaRocco Award of January 16, 1990, simply stated, upheld the Organization's position that the Carrier could not discontinue the supplemental extra boards in order to have enough engineers to fill uncovered hostler vacancies.

Following the LaRocco Award, the record shows that the parties still were at odds with respect to the issue addressed by LaRocco--so much so that the Federal Court became involved. During the course of preparing its position for these proceedings, the Carrier states it discovered a letter dated January 24, 1989 (the "Letter") signed by the Organization and the Carrier. That Letter purportedly supported the Carrier's position in the exact manner that it had argued in the arbitration proceedings before LaRocco.

Specifically, the Letter answered four questions with respect to the Letter Agreement No. 1 to the Union Pacific-MKT Merger Agreement dated December 9, 1988, the Agreement at issue here. Because it was signed by both parties, the Carrier points out it constituted an agreed-upon interpretation of the Merger Agreement. In essence, it is the discovery of this new evidence that formed the basis to trigger the instant proceedings because it was not presented during the LaRocco proceedings. Accordingly, the question to be resolved has been modified as follows:

"Does Letter Agreement No. 1 to the Union Pacific-MKT Merger Agreement dated December 9, 1988, and agreed to interpretation dated January 24, 1989, taken together, clarify the intent of Letter Agreement No. 1 to the extent that they allow the Carrier to reduce or discontinue supplemental extra boards in order to reduce engineers from the engineers' working list to demoted status?"

The Board, at the onset, finds that, with the exception of the Letter and the arguments surrounding that particular document, the question at issue here and the position of the parties in these proceedings is substantively the same as presented during the LaRocco proceedings. The Board also finds that the contents of the Letter of January 24, 1989, when considered in light of these proceedings does not alter the substance of the parties' positions. Accordingly, the Board must follow the well-founded Principle, based on the doctrine of stare decisis, that a prior Award is given authoritative force when the same issue subsequently arises. Accordingly, the Board affirms the prior findings of Arbitrator LaRocco, in the Award dated January 16, 1990.

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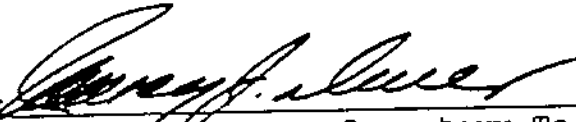
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A W A R D

The question at issue is answered "No".

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Secretary To The Board

Dated at Chicago, Illinois, this 23rd day of July 1993.