

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24966
Docket No. 44291
98-1-94-1-N-2232

The First Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(United Transportation Union
PARTIES TO DISPUTE: (
(New Jersey Transit

STATEMENT OF CLAIM:

"Harold A. Breining's Roster Protest, dated August 16, 1993, wherein his position on the seniority roster was changed, while attending the Locomotive Engineer Training Program (LETP), as a result of a decision made by New Jersey Transit Rail Operations, in both rule and practice."

FINDINGS:

The First 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.

As Third Party in Interest, the Brotherhood of Locomotive Engineers was advised of the pendency of this dispute, chose to file a Submission with the Board and was represented at the Hearing.

The record shows no dispute, as stated by the Carrier, that the BLE "is the duly elected, exclusive representative of the Locomotive Engineers, Assistant Engineers and

Locomotive Engineer Trainees at NJ Transit." The record also shows, however, that the claim herein was progressed on the property by the United Transportation Union. After BLE became knowledgeable of the matter, it is sufficient for the Board to note that the matter was properly brought to the Board for resolution, rather than to a previously existing Public Law Board established for the UTU and the Carrier.

The Claimant applied for and was accepted in the Locomotive Engineer Training Program (LETP). His first day of class in the program was April 20, 1992. His claim is that, upon completion of the program, his standing on the seniority roster was altered to his detriment.

The cause of the Claimant's complaint stemmed from the inclusion in the LETP of three Carrier employees not in the Carrier's rail operations. It was their placement on the seniority roster that the Claimant contended adversely affected his rights.

The Carrier points to an Agreement dated May 21, 1992 reading in pertinent part as follows:

"This is in reference to our discussion regarding the roster placement of the current class of Locomotive Engineer Trainees and all subsequent classes.

As we discussed, the parties have agreed that with respect to Section 1 - Locomotive Engineers, Rule 12 - Seniority, Paragraph (g)(2), the following will apply:

Current NJTRO employees will be defined as current employees working in the Rail, Bus, or Headquarters Division of New Jersey Transit."

The position on behalf of the Claimant is that the quoted Agreement was reached after commencement of the LETP in which the Claimant participated, with the argument that seniority rights cannot be retroactively diminished.

The Board notes that the May 21, 1992 Agreement was in fact signed one month after commencement of the April 20, 1992 LETP; however, this program was clearly not completed as of May 21, 1992, on which date none of the program participants could lay

claim to Engineer qualifications. Even more significant is the first sentence of the Agreement that unambiguously makes reference to "the roster placement of the current 1992 class of Locomotives Trainees and all subsequent classes." (Emphasis added)

The Agreement was made by the Organization authorized to represent the program participants. The terms of the Agreement support the placement order of the participants, including the Claimant.

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 First Division

Dated at Chicago, Illinois, this 21st day of December 1998.