

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13286

Docket No. 13266

98-2-97-2-36

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Alexander Gonero

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Southern
(Pacific Railroad Company)

STATEMENT OF CLAIM:

"Questions of Law:

1. Did the Union Pacific/Southern Pacific Railroad Company and District 19, I.A.M.&A.W. violate Grievant's rights to Due Process and Equal Protection under the Law when they willfully refused to extend to Grievant his guaranteed protection under Rule 38, 1993 Controlling Agreement and any and all State and Federal Laws pertaining to the matter?
2. Did the Union Pacific/Southern Pacific Railroad Company willfully violate Rule (sic) 19 and 28 of the 1993 Controlling Agreement, but not limited to the above stated rules, when the Company placed Mr. Gonero (Grievant) on lay-off status on August 28, 1995, and did the District 19, I.A.M.&A.W. violate Grievant's rights when it refused to carry out its responsibility to represent Grievant and insure that his rights under the 1993 Controlling Agreement was enforced to the effect that Grievant should not have been laid off from Roseville Point but should have remained on that job according to the Provisions of the 1993 Controlling Agreement and the Agreement to Transfer signed by the Company and approved by the District 19, I.A.M.&A.W. on July 26, 1995?"

Remedy Requested

1. Grievant, Mr. Gonero, should immediately be placed back on his rightful job at Roseville Locomotive Repair Facility with his Seniority intact dating back to August 15, 1995, and all rights guaranteed under the Provisions of the 1993 Controlling Agreement.
2. Grievant requests Compensatory damages involving moving costs from West Colton to Roseville and vice versa, and any future costs.
3. Grievant requests compensatory damages involving costs incurred in pursuing this matter.
4. That Grievant be granted such other and further legal equitable relief as the National Railroad Adjustment Board may deem just and proper.
5. That Defendants be enjoined from discriminating against Grievant in any manner that violates any State and / or Federal Statute pertaining to his employment."

FINDINGS:

The Second 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.

Claimant, whose seniority was and is now at West Colton, desired to work at Roseville. He found a Machinist at Roseville who wanted to work at West Colton. Claimant and another Machinist sought permission from the Organization to swap positions, each understanding that their original seniority date was not transferrable, that each would establish a date at the facility transferred to as of their first day of work. Claimant commenced service at Roseville on August 15, 1995. On August 28, 1995, Claimant's position was abolished in a notice dated August 28, 1995. Claimant was allowed five days' pay as Carrier realized that Claimant was not afforded five working days' advance notice. (Second Division Awards 10424, 10730; Third Division Award 28342).

In a letter dated August 31, 1995, Claimant presented what he contends was a grievance for violation of several Rules, and on September 1, and again on September 6, he wrote management demanding that he be allowed to return to West Colton and assume his old job and his seniority at that point. Carrier agreed to his request.

On October 19, 1995, the Organization sought compensation for Claimant for time lost from August 29 through September 22, 1995.

The Carrier responded with an offer of eight days' pay based upon the fact that Claimant had been paid five days for the abbreviated abolishment notice, and the delays encountered on his return to West Colton. Claimant agreed to this settlement.

In the normal course of grievance handling in this Industry, the January 12, 1996 settlement would have ended the matter. However, Claimant continued to pursue a number of matters as grievances up until the Claimant's Notice to this Board on April 23, 1997. While the Claimant may perceive that he has somehow been mishandled, the record that is before us does not support with substantive evidence that he has been contractually aggrieved. To put it another way, there is no evidence that any of the Rules cited have been violated to warrant compensation or other disposition to the Claimant beyond what he has already received.

First, there is nothing in this record that Claimant's furlough on August 28, 1995, was anything other than a furlough in the normal course of business. While Claimant has made numerous contentions of ill feelings, there is not one piece of evidence that

would substantiate that Claimant's furlough was something otherwise. Furthermore, Claimant was, at the time of the abolishment, the youngest regularly assigned Machinist at Roseville.

Second, Rule 19 does not provide for Claimant to have acquired seniority at Roseville. Rule 19 states in pertinent part:

"... employees transferred from one point to another will, after thirty (30) days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date pay starts. . . ."

When Claimant transferred to Roseville on August 15, 1995, that started the 30 day period stated in Rule 19. Claimant's seniority would be, as of August 15, 1995, at Roseville had nothing else happened. As was noted above, Claimant was furloughed on August 28, 1995, and he did return to his position at West Colton with his seniority intact. Since Claimant had not been at Roseville for 30 days before returning to West Colton, he did not acquire seniority at Roseville. There is simply no basis in this record for the Claimant's contention that he has a contractual right to seniority both at Roseville and at West Colton.

Having concluded that there was no contractual mishandling of the Claimant in his move to Roseville and subsequent return to West Colton, we would normally end our findings at this point. However, in this case the Claimant has raised a number of other issues which, while having little to do with contractual entitlement, have colored his progression of this matter. So that there is no misunderstanding that all of the Claimant's many and varied contentions have been considered and evaluated, the Board also makes the following observations.

As discussed above, there is nothing in this record that would substantiate that Claimant has been mishandled. In fact, it seems that the Claimant was properly accommodated in attempting to relocate and, subsequent to his furlough, to return to West Colton per his demand. There is just no evidence that the Claimant's furlough on August 28, 1995, was anything other than in accordance with the Collective Bargaining contract. Both the provisions of the contract, particularly Rule 19 and the July 26, 1995 "transfer agreement," were properly implemented. The Board has reviewed the many

assertions, contentions, and conclusions that Claimant has made in this voluminous record, and must conclude that there is no rational basis for coming to a different conclusion.

Claimant has also argued that he was mishandled both by the Railroad and by his Organization. The facts in this case are that his grievance was handled to a satisfactory conclusion by his Organization. That is evidenced in the January 12, 1996 settlement to which Claimant agreed. That the Claimant seems to believe that different representatives of the Carrier and the Organization should have acted differently does not require us to conclude that Claimant's contract rights have been abridged. The reality of the situation is that the matter has been advanced to this Board and has been considered.

The third point that the Board will comment upon is the Claimant's continuing assertion that there is a cabal against him by both the Carrier and by the Organization. According to the Claimant, this incriminating evidence is contained in a number of letters written between the parties while the matter was still in dispute in September, 1995. In essence, this correspondence reflects that the parties---all of them including the Claimant---were agreed on the transfer of the two Machinists and the subsequent "return to their respective locations" in August and September 1995. There is nothing in this correspondence that could be interpreted as animus against Claimant.

In view of all of the foregoing, there is no basis in the record before us to conclude that the Claimant has been mishandled or aggrieved under the contract in this matter.

Since it is the finding of the Board that the claim is lacking the evidence necessary for a sustaining award, there is no need to adjudicate Carrier's procedural arguments.

AWARD

Claim denied.

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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 Second Division

Dated at Chicago, Illinois, this 18th day of May 1998.