

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13195

Docket No. 13099

98-2-95-2-127

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

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Delaware and Hudson Railway Company, a Division of CP Rail System, violated the Agreement when they refused to allow Carman James P. Young (seniority date October 19, 1971) to displace a junior employee on the System Seniority roster after his position was abolished in Saratoga, NY.
2. That, accordingly, the Delaware and Hudson Railway Company (hereinafter ‘Carrier’) be ordered to pay James P. Young (hereinafter ‘Claimant’) eight (8) hours pay at the straight time rate, for each day he was withheld from service, commencing on January 9, 1995 and every day thereafter until he is restored to service. In addition, the Carrier be ordered to allow Claimant the opportunity to displace a junior employee at Saratoga, NY as is provided by our controlling Agreement.”

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.

The significant events leading to this dispute began on December 13, 1994 when Carman D. LaBombard went on sick leave. The Claimant, the most senior furloughed employee from the CP Rail System Seniority Roster, was called to fill the temporary vacancy on the permanent position, pursuant to Rule 2 of the Parties' Agreement.

The Carrier, on December 16, 1994, sent letters to all furloughed employees. The letter stated in part that it would fill the position "as expeditiously as possible as we felt the vacancy would be an extended one." However, on December 21, 1994 Carman LaBombard advised the Carrier that he would return to work sooner than previously anticipated. The Carrier asserts that it became clear at that time that the position filled by the Claimant (Carman LaBombard's position) would not be permanent. LaBombard returned to work on January 3, 1995, and thus the Claimant was no longer needed.

On January 9, 1995 the Claimant, relying on Rule 20.3 of the Parties' Agreement, attempted to exercise his seniority to a position occupied by a junior employee. The Carrier refused to allow the displacement for two reasons. First, it contended that the position occupied by the Claimant (LaBombard's position) was not a permanent job and, therefore, he was not entitled to a displacement. Without prejudice to that position, it also contended that the Claimant would not have been entitled to a "bump" because the five day displacement time limit had been exceeded. Specifically, the Claimant's last day of work was January 3 and he did not attempt to displace until January 9, 1995.

The Board, after careful review of the record, finds that the claim would be best settled by reinstating the Carrier's offer to pay the Claimant five days' pay.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February 1998.