

**Award No. 3708**  
**Docket No. 3248**  
**2-P&LE-TWUOA-'61**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

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**PARTIES TO DISPUTE:**

**TRANSPORT WORKERS UNION OF AMERICA**  
**(Railroad Division) A. F. of L.—C. I. O.**

**THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY**  
**AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

On Wednesday, October 16, 1957, Foreman Fitzpatrick notified Mr. Fox that he was being bumped off his job at the interchange. Mr. Fox asked what job he could bump and he was told that the only job he could bump was a third trick job at the East Yard. The days off on this job are Wednesday and Thursday.

When Mr. Fox reported for work on Friday at the East Yard he found out that he could have bumped a third trick job at the interchange which he had wanted in the first place. If Mr. Fox had been notified that he could have had this job he would have worked October 17 and 18, 1957.

Since it was management's fault that the employe did not get the job he wanted the Organization requests that Mr. Fox be paid eight (8) hours for October 17 and 18, 1957, due to the fact that he lost these two (2) days through no fault of his own.

**EMPLOYEES' STATEMENT OF FACTS:** On Wednesday October 16, 1957 Mr. Fox was notified by the foreman that he was being bumped off his job at the interchange yard.

Mr. Fox asked the foreman what job he could bump and he was told that the only job he could bump was a third trick job at the East Yard with rest days, Wednesday and Thursday.

Mr. Fox reported on Friday at the East Yard and found out that a junior man was working the third trick job at the interchange which Mr. Fox had wanted in the first place but had not been notified by the foreman that

ant Fox gained rather than lost in that he worked 12 days out of the 16 days between October 10 and October 25, 1957, inclusive.

### CONCLUSION

The carrier's position may be summed up as follows:

1. The organization in progressing this claim has failed to cite a rule violation, but merely content themselves with the assertion that "Since it was management's fault that the employee did not get the job he wanted the Organization requests that Mr. Fox be paid eight (8) hours for October 17 and 18, 1957, due to the fact that he lost these two (2) days through no fault of his own."
2. The employe, being constantly subject to displacement by senior employes was aware of what junior employes were working and could have displaced any of them.
3. It is not the management's obligation to exercise an employe's seniority.
4. There is no rule in the applicable agreement which would require the carrier to pay a penalty day or days when an employe is dissatisfied with the job he displaces on.

Carrier respectfully submits that the claim is entirely without merit and requests that it be denied.

**FINDINGS:** The Second 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.

When Claimant was displaced by a senior man on October 16, 1957, the employes contend that the Car Inspectors' Foreman informed him that the only job he could bump was a third trick job at the East Yard and that when he reported for duty on that job he discovered he could have bumped a third trick job at the Struthers, Ohio Interchange which he would have preferred.

The organization maintains that as the result of the alleged erroneous advice given by the Foreman, Claimant lost two days' time which he would have otherwise worked.

The Carrier disputes the claim that the Foreman gave the advice complained of and insists that claimant was informed of the jobs available to him and that he elected to bump at the East Yard.

On the record before us we are unable to resolve this conflict and, inasmuch as the burden is on Claimant to sustain his claim by sufficient evidence, we are compelled to find that the instant claim lacks support.

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**AWARD**

**Claim denied.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman  
Executive Secretary**

**Dated at Chicago, Illinois, this 6th day of March 1961.**