NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24942
THIRD DIVISION Docket Number MW-25068

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to permit Equipment Operator J. R. Greenhow to displace an equipment operator at Lee Hall on December 1, 1981 (System File C-TC-1257/MG-3326).

(2) The claimant shall be allowed eight (8) hours of pay at his straight time rate for December 1, 1981."

OPINION OF BOARD: The record indicates that on November 30, 1981, Assistant Supervisor O'Brien notified Claimant that he was being displaced by a senior employe, effective December 1, 1981. Claimant advised O'Brien that he wished to exercise his seniority on Foreman Barker's force at Lee Hall, Virginia on that day. When the Claimant arrived at Lee Hall, he was not permitted to work because the employe he wanted to displace had not been notified the previous day, in accordance with the Agreement.

The Carrier contends that the displaced employe was not so notified because the Claimant failed to inform the proper Carrier representative that he wished to exercise his displacement rights. The Carrier maintains that the proper representative was Supervisor Thomas and not Assistant Supervisor O'Brien. Therefore, the Carrier concludes that the Claimant failed to follow the provisions of Rule 2(s) which governs situations of this type.

The Organization asserts that by notifying Assistant Supervisor O'Brien, Claimant complied with Rule 2(s). The Organization points out that it was O'Brien who notified Claimant of his displacement and, therefore, Claimant reasonably believed that he should notify O'Brien of his desire to exercise his seniority rights at Lee Hall on December 1, 1981.

The controlling provision of the Agreement reads as follows:

> "Rule 2(s) Displacement Notification -- Employees making displacements under the provisions of Section (h) or (i) of this rule will be obligated to notify the proper representative of the Railway Company to enable them to notify the employee being displaced before he quits work on the day before his displacement becomes effective."

The language of Rule 2(s) requires a displaced employe to notify the "proper representative" if he wishes to exercise his seniority rights. This is so in order that the second employe displaced will be given such notice before the second displacement becomes effective. However, the record does not make clear whether the proper representative was Assistant Supervisor O'Brien or Supervisor Thomas. In light of that ambiguity, the Claimant acted reasonably by notifying O'Brien of his intent to displace an employe at Lee Hall. The record shows it was O'Brien who notified the Claimant of his own displacement.

Furthermore, the record also reveals that O'Brien did, in fact, attempt to contact Supervisor Thomas relative to Claimant's desire to exercise his seniority rights at Lee Hall on December 1, 1981. Therefore, the Carrier took it upon itself to make the necessary arrangements for the second displacement. The Claimant should not be disadvantaged simply because the Carrier failed to complete those arrangements so as to timely notify the displaced employe at Lee Hall. The Board accordingly determined that under the circumstances of this case the Claimant did notify his "proper representative" and that the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.