

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George V. Boyle, Referee

Award Number 25084
Docket Number MS-24978

PARTIES TO DISPUTE: (Randall D. Jones
(Norfolk and Western Railway Company (Western Lines)

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an **ex parte** submission on March 11, 1983, covering an unadjusted dispute between me and the Norfolk and Western Railroad involving the question:

On July 22, 1982, I was notified by letter that I had lost my Group 3 Backhoe rights. However, I believe that I was discriminated against in enforcement of rules concerning bumping."

OPINION OF BOARD: The Claimant was an **employee** of the Carrier with a seniority date of October 17, 1979, who had worked as a Backhoe operator. He was bumped off a machine on June 11, 1982 and exercised his rights to claim status as a Laborer when he believed that there was no other machine to which he could lay claim. He worked in this classification from June 14 - 25, 1982.

However there were junior men to him working as Backhoe operators and Rule 4 of the current agreement reads as follows:

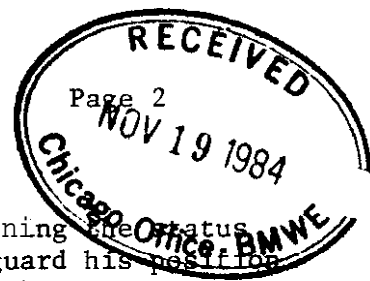
"(d) An employee exercising his seniority in a lower classification, on account of force reduction, must avail himself of the opportunity of again raising himself to a higher class when permanent vacancies occur or new positions are created, seniority to govern. An employee who fails to comply with the above and who continues to remain in a lower classification will lose all seniority rights in higher classification which he might have held prior to said reduction."

In consequence he was informed by letter of July 21, 1982, that, "you have lost your Operator's rights for Backhoe under Group 3 and your name will be removed from the Operator's Roster."

While the Claimant alleges discrimination in the enforcement of rules concerning bumping he produces no hard evidence of disparate treatment or inconsistent enforcement. The charges are made without any evidence or testimony to substantiate them and so must be discarded.

The Carrier raises the question of the timeliness of the claim as well as the procedure followed being improper. The Board is urged not to consider the claim but the procedural question is moot since the Board finds that the claim must be denied on its merits.

The language of the Rule 4(d) is clear, the record of junior **employees** working in the Backhoe Operator classification is well documented and the Claimant's failure to "avail himself of the opportunity of again raising himself to a higher **class**" is similarly clear.



Whether he was misinformed or was negligent in ascertaining the status of junior Operator is immaterial. It was his obligation to safeguard his position and this he failed to do and the Board must therefore deny his claim.

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

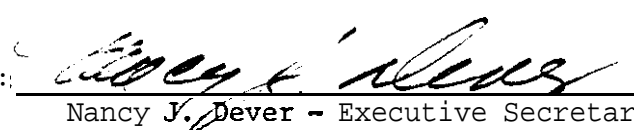
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.