NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25205

THIRD DIVISION

Docket Number MW-24028

Herbert Fishgcld, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri-Kansas-Texas Railroad Company

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

(1) The Carries violated Article 3 Rule 6 of Agreement DP 357 when it omitted Mr. Charles Lee Cutrer's name from the Seniority Roster (System File 400-331/2579).

(2) The Carrier now amend the roster and send a correction notice to the General Chairman and to the Local Chairman because of the violation referred to above.

OPINION OF BOARD: The instant claim alleges that Carrier violated Article 3, Rule 6 of Agreement DP 357 when it omitted Mr. Charles Lee Cutrer's name from the Seniority Roster.

On August 3, 1977, Charles Lee Cutrer was employed by the Carrier as Track Laborer, Sled Gang 473, Waco, Texas. On June 22, 1979, Cutrer, while working as a Track Laborer, Section Gang No. 415, Dallas, Texas, was displaced in a seniority move by a senior Track Laborer.

On June 25, 1979, Cutrer filed the following notice with Mr. Hacker, Director of Labor Relations and Personnel:

> Due to a forced reduction in personnel, I have been temporarily laid off as of Monday, June 25, 1979. I would like you to hold my seniority for one year, or until I am called back to work.

The notice was filed pursuant to Rule 11 of Article 3, which reads in pertinent part:

> "Rule 11. Furloughed employes who desire to retain their seniority rights must, within ten (10) calendar days from the date furloughed, file their name and address in writing...".

Claimant was returned to service by the Carrier on August 16, 1979, as Track Laborer, Gang No. 486, Hillsboro, Texas in compliance with Rule 3 of Article 6 which reads:

> "Rule 3. When forces are increased, vacancies occur or new positions created, employees will be returned to the service in accordance with their seniority."

On September 12, 1979, Carrier informed Claimant that he forfeited all seniority prior to August 16, 1979 because he allegedly failed to displace a junior Track Laborer at Wichita Falls, Texas on June 25, 1979.

Rule 2, Article 6, Force Reduction, of Agreement No. DP-357, states, in pertinent part:

> "... Employes affected by force reduction will be required to, within ten (10) days thereof, exercise seniority by displacing a junior employe on their seniority district, and in classified positions in which they hold seniority. Employes affected by force reduction who do not have sufficient seniority to displace a junior employe on their seniority district will be classified as furloughed employes, subject to Rule 11 of Article 3."

Carrier contends that since there was a junior employe on Claimant's seniority district who he could have displaced within ten days from the time he was displaced by a senior employe at Dallas, Texas, his failure to do so required by the Agreement resulted in automatic forfeiture of his seniority and employment relationship ten days subsequent to June 22, 1979. Accordingly, Claimant's employment on August 16, 1979 reestablished his seniority and employment relationship with the Carrier as of that date.

The Organization contends that upon Claimant's displacement, he sought assistance of certain Carrier officers, including Assistant Roadmaster Osborn, as to precisely where he could displace a junior Track Laborer. In support Of this position, the Organization refers to two letters from Claimant submitted to Mr. Self, General Chairman of the Organization. The first letter, dated September 12, 1979 reads:

> "In regards to the loss of my seniority. I was not informed by any m-k-t official or any railroad person that there was a man with less seniority than I had.
>
> After I was called back to work I was informed today that I had lost all my seniority because I did not place myself. So I would like you to look into getting my seniority back since I was not informed where to bump in at."

The second letter, dated October 4, 1979, reads:

> "In reference to our telephone conversation this is to advise that Asst. Roadmaster Osborn was the person who told me that there was not any place that I would exercise my seniority in my seniority district.
>
> This occurred the last part July, 1979."

The Carrier argues that the Organization's contentions are unsupported and self-serving assertions. In this regard, the Carrier notes that "we are unable to find any MKT official or other employee who furnished erroneous information to Mr. Cutrer as alleged by you". Moreover, the Carrier points out that the ten-day period in which Claimant had to exercise his seniority after being displaced by a senior employe expired on July 6, 1979, but that Claimant's October 4, 1979 letter refers to his alleged conversation with Osborn as occurring the last part of July 1979. Finally, the Carrier maintains that when Claimant reentered Carrier's service on August 16, 1979, he completed the usual entrance-to-service application papers and requirements, and reentered as any other new employe.

It is obvious from the above that there are serious conflicts in the record. Circular 1 requires that all arguments be supported with pertinent. facts and evidence. Yet, both parties have been remiss in flushing out the record to clear up these conflicts. For example, although the Organization maintains that Mr. Osborn told Claimant that there was no junior employe on his seniority district that he could displace, Claimant's October 4, 1979 letter indicates that this discussion took place in late July, 1979. The Organization suggests this was an error; that Claimant obviously meant to say late June, 1979.

On the other side of the issue, the Carrier alleges that Claimant was rehired as a new employe on August 16, 1979, and completed his reemployment application as such. Yet, no employment application was made part of the record. Moreover, the Board is troubled by the fact that although Claimant was "reemployed. on August 16, 1979, it was not until September 12, 1979, that he was notified that he had lost his seniority.

Based on the record as presented, the Board must conclude that when Claimant was displaced, he was advised that there was no junior employe for him to displace. He then filed the notice provided for in Rule 11 of Article 3 within the prescribed ten days. When Claimant was recalled on August 16, 1979, he should have been credited with his existing seniority date of August 3, 1977. Accordingly, the Claim will 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 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 11th day of January 1985.