

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25349
Docket Number MW-25221

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

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

(1) The Carrier violated the **Agreement** when it improperly removed A. R. Sanchez from the foreman's seniority roster on September 8, 1981 (Carrier's File **MofW** X-223).

(2) Claimant A. R. Sanchez's seniority as foreman shall be restored as of August 29, 1978 and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: A claim was filed on October 19, 1981, by the Organization on behalf of the Claimant, A. R. Sanchez. by the District Chairman of the Brotherhood. The claim alleges that the **Carrier** was in violation of the current **Agreement** when it allowed a junior **employee** to displace the **Claimant** from his assigned **position as** Foreman, Extra Gang No. 32, **Palmdale**, California.

The instant dispute centers on the correct seniority date of the Claimant in the Foreman's Class. Prior to September 8, 1981, the Claimant was ill for some three (3) months and was on sick leave during that time. **Upon** reporting to the Carrier's Division Engineer's office at Bakersfield, California on September 8, 1981, he was told by that office that he would not be able to return to his former position pursuant to the Rules but that he was being assigned to a Foreman's **position** on Extra Gang No. 32 at **Palmdale**, California. Since the Claimant apparently did not wish to **accept this** assignment he relinquished it and in so doing also relinquished his seniority date of October 29, 1978, in that Class. After an apparent change of mind the Claimant then bid on the Extra Gang No. 32 Foreman vacancy and in so doing established a new seniority date in that Class which was September 23, 1981. Shortly after this the Carrier then permitted **another employee**, Mr. M. P. Gonzalez, with a seniority date of September 4, 1979, to displace the Claimant as Foreman of Gang No. 32. **This caused the** Claimant to bump down and **displace a Laborer on Extra Gang No. 25.**

As moving party the burden of proof is on the Organization in the instant case to show that the **Carrier** either coerced the **Claimant** into relinquishing his seniority date in the Foreman's Class on September 8, 1981, or to prove that the **Carrier** was in some other manner in contravention of the current **Agreement** with respect to the dispute at bar (Second Division Awards 5526, 6054; Third Division Awards 18863, 19670). A search of the record fails to show that the Organization has met that burden. Under Rule 7 of the current **Agreement** the Claimant forfeited his seniority in the Foreman Class on September 8, 1981, when he signed Form 011-141-1 (**M of W&S**). This Rule states the following:

'Promotions - Employees declining promotion shall not lose their **existing** seniority, but employees who elect to remain in a lower class when their seniority in a higher class should be exercised under other rules of this Agreement shall forfeit their **seniority** in such higher class.'

What apparently happened is that the Claimant simply changed his mind some two (2) weeks after relinquishing his right to the Extra Gang No. 32 Foreman position under Rule 7. When he later decided to accept the position in question he had already applied, however, the provisions of Rule 7 cited above. As an additional point, the Organization also contends that the signing of Form 011-141-1 on September 8, 1981, was null and void in either case since the Claimant was not the most senior **employee** eligible for the Extra Gang No. 32 Foreman position under Rule 10(c) of the current Agreement. This Rule reads in pertinent part:

"No Applications Received - (c) Where positions and vacancies are advertised under the provisions of this rule and no applications are received, the senior employee in a class who has displaced in a lower class or is out of service account force reduction shall be assigned."

The Board can find nothing in the record by way of substantial evidence to show that the Claimant was not the employee to whom this contract provision was applicable when he returned to work on September 8, 1981, after the Extra Gang No. 32 Foreman's position had been bulletined and after it had not been, up to that point, bid on. The **instant claim cannot** 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 **Employees involved in this** dispute are respectively Carrier and Employee 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 15th day of March 1985.