NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25421

THIRD DIVISION

Docket Number MW-25328

John E. Cloney, Referee

PARTIES TO DISPUTE: *(Brotherhood of Maintenance of Way Employes*
(
(Missouri Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it refused to permit Trackman Bernard Grays to displace a junior trackman at Centennial Yard on February 27, 1981 (Carrier's File S 310-410).

(2) Because of the aforesaid violation, Trackman Bernard Grays shall be allowed eight (8) hours of pay for each work day and holiday beginning April 15, 1981 continuing until he is returned to work.

OPINION OF BOARD: *Claimant Bernard Grays' position as Trackman was abolished as part of a force reduction on February 6, 1981. Rule 2(f) provides:*

> *"Employees entitled to exercise seniority rights over junior regular assigned employees must designate exercise of such rights within twenty (20) calendar days following their displacement...except an employee who becomes physically disabled during the twenty calendar day period specified herein will be allowed such additional days to exercise such rights as remained in the twenty calendar day period at the time he became disabled..."*

The Organization contends Claimant sustained an off duty injury on February 25, 1981, and reported on February 26, 1981, telling Foreman Hopkins he desired to exercise his seniority but had to visit his physician. The Organization further claims the Foreman advised Claimant to return the next day with documentation but when Claimant reported on February 27, Hopkins advised him he could not displace anyone because the twenty-day period had expired.

The Carrier contends Claimant, who was assigned a position at the Dallas-Fort Worth Terminal, reported to Foreman Hopkins at Handley, Texas, at 9:30 A.M. on February 26 and attempted to displace a junior Trackman. Hopkins would not allow him to do so because he had not reported at the headquarters point at the gangs' starting time of 7:00 A.M. and therefore had not exercised his right within 20 days. The Carrier contends Claimant made no mention of an off duty injury until after Hopkins refused to make the displacement. It states Claimant reported on February 27 at 7:00 A.M. at the headquarters point and was again told by Hopkins he had failed to exercise his rights within twenty days. The Carrier says nothing further was heard from Claimant until April 10, 1981, at which time he claimed to have "slipped on a banana peeling" and injured himself. He had no physician's certificate but returned on April 17, 1981, with a statement from a doctor that he had been totally disabled from February 26 to April 16. The nature of Claimant's condition was not described. He was ultimately assigned to a Trackman position on September 25, 1981.

An obviously important factual issue is whether Claimant was injured on February 25, 1981, and merely reported to so inform the Carrier on February 26 as he contends, or whether he reported on the 26th attempting to replace a junior employe, but was refused for the reason stated by the Carrier. Another factual issue is whether Claimant reported on the 27th because he was told to as he maintains or whether he reported seeking to work as the Carrier asserts. This Board clearly is in no position to resolve these factual questions (though we do note there's evidence that Claimant, while contending he returned on the 27th because he was told to bring a certificate from his physician, did not produce the certificate until several weeks later) and we therefore must conclude Claimant has not established a violation of the Agreement. (Awards 22290, 20053, 21423, 20429)

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
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.