

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26264
Docket Number MW-26460

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement **when it** refused to permit Repairman T. R. Anders, Jr. to displace a junior repairman on December 1, 1983 (System Docket CR-629).

(2) Because of the aforesaid violation, Repairman T. R. Anders, Jr. shall be allowed eight (8) **hours** of pay at his straight time rate."

OPINION OF BOARD: The Claimant established and holds seniority as a Maintenance of Way **Repairman in the** Carrier's Track Sub-department. On December 1, 1983, the Claimant was displaced by a senior employe prior to the **beginning** of his shift. The Claimant's assignment was Monday through Friday, with a 7:30 A.M. starting time. On the day in question **the** Claimant arrived late to work and after discovering that he **had been** bumped he attempted to displace a junior employe at 7:45 A.M. This exercise of seniority rights by **the** Claimant was not permitted by the **Carrier** and the Claimant did not work on December 1, 1983. On the following work day the Claimant exercised seniority and displaced **a junior** employe.

On December 9, 1983, the Organization filed a **Claim** on behalf of the Claimant on the grounds that the Carrier was in violation of Rules 4 and 40 of the applicable **Agreement**. The prior **Rule deals**, in pertinent **part**, with seniority and the latter Rule deals with discrimination.

The only issue at bar is whether the Agreement permits the Carrier to deny an **employee's** displacement rights **if** the employe attempts to exercise such rights after arriving late for work. There is no dispute of fact that the Claimant arrived at work to cover his assignment five (5) minutes after starting time. The Board can find nothing in the language of **the Agreement** which does not permit supervision to deny displacement rights if the **employee** attempting to exercise these rights is late for work. **Rule 4** is silent on this question. On the other hand, the Carrier argues that there has **bee**" **a well** established practice on the property to permit displacement only prior to the starting time of a given tour of duty. Such is not contradicted by the Claimant in the record before the Board by means of any substantial evidence showing. Substantial evidence has **been** defined as such "relevant evidence as a reasonable mind might accept as adequate to support a **conclusion**" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). The Board also cannot find evidence in the record to warrant conclusion that the Claimant was subject to

discrimination. As moving party the burden of proof in the instant **case** lies with the Claimant (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482). Study of the record shows that this burden has not been met. The Claim cannot, therefore, 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 Employees 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

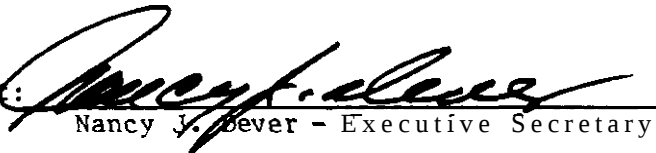
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.