

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26283
Docket Number MW-25636

John B. LaRocco, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

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

1. Mr. J. E. Cooksey shall be afforded a seniority date as foreman as of May 26, 1982 in conformance with Rule 2(b)(1) [System File B-1343/MWC 83-1-14A]."

OPINION OF BOARD: The issue in this case centers on the proper interpretation and application of Rule 2(b)(1) which reads:

"An employe shall establish seniority in other than Class 1 retroactively as of the date assigned a position or vacancy in such class after the employe has performed service on 20 working days in such class without being disqualified."

The relevant facts are undisputed. Claimant acquired a June 30, 1975, seniority date as a monthly rated Machine Operator which, like Foreman and Assistant Foreman, is a Class 4 position. By Bulletin ED-108A, the Carrier awarded Claimant an Assistant Foreman position on Sled Gang No. 1 headquartered at Lindenwood, Missouri. Claimant assumed his new position on June 16, 1982. After claimant performed service on eleven work days, the Carrier abolished the Sled Gang. Next, Claimant was assigned to fill a temporary vacancy on a monthly rated Machine Operator position at Springfield, Missouri. Claimant protected the position for seven work days between July 1, 1982 and July 12, 1982. On July 13 and 14, 1982, Claimant worked as an Assistant Foreman on a Surfacing Gang. Thereafter, Claimant reverted to the temporary Machine Operator position and the Carrier permanently awarded Claimant the position on October 8, 1982.

The Organization urges this Board to order the Carrier to grant Claimant seniority as a Foreman retroactive to May 26, 1982, which was the date the Carrier awarded him the Assistant Foreman job on the Sled Gang. The organization argues that Claimant performed twenty work days of service in Class 4. Because Claimant worked eleven days as an Assistant Foreman, seven days as a Machine Operator and two additional days as an Assistant Foreman, the Organization concludes that Claimant satisfied the twenty day prerequisite in Rule 2(b)(1). On the other hand, the Carrier contends that Rule 2(b)(1) has always been interpreted to require worker to occupy a single position in Class 4 for twenty days. If he meets the condition, the Carrier asserts that the worker achieves seniority to the particular positions in Class 4.

On its face, Rule 2(b)(1) is ambiguous. The Rule is susceptible to more than one interpretation. Thus, this Board must inquire into the parties' past practice of applying the Rule. If the Organization's interpretation were correct, Claimant would have acquired seniority to all Class 4 positions when he gained his monthly rated Machine Operator seniority back in 1975. His Machine Operator work was never counted towards obtaining seniority as a Foreman. The past practice, as applied to Claimant, evinces the parties understanding that an employee had to work twenty days in one of the three enumerated Class 4 positions rather than cumulatively performing any Class 4 service for twenty days. Therefore, Claimant did not satisfy the requirements of Rule 2(b)(1).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

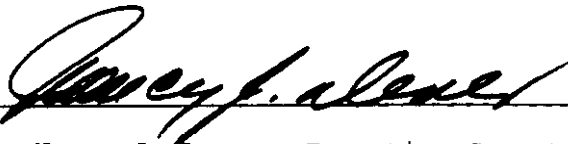
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.