

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The Carrier violated the Agreement when it omitted Mr. T. J. Darscheid's name from the 1984 Roadway Machine Operator's Seniority Roster (System File C-M-2136/MG-4581).

(2) As a consequence of the aforesaid violation, Mr. T. J. Darscheid's name shall be included on the Roadway Machine Operator's Seniority Roster with machine operator's seniority dating from April 6, 1979."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Subsequent to his hire as a trackman, the Claimant established seniority in a number of other higher classifications and groups in the track sub-department. Prior to the time the instant dispute arose he held seniority in the Trackman, Assistant Foreman and Track Foreman classifications of Group No. 1 (Track Group) and in the Machine Operator classification of Group No. 3 (Roadway Machine Operator Group).

During the Spring of 1983, the Claimant was regularly assigned as a Track Foreman and was required to complete daily time and meal allowance forms. During May 1983, the Claimant was charged with falsifying his time and meal allowance sheets for May 12, 1983. Following a disciplinary hearing held on June 6, 1983, the Claimant was found guilty of the charge and his discipline was set forth in a letter dated June 22, 1983, which stated:

"The discipline administered is demotion to Trackman effective 4:00 pm Wednesday, June 22, 1983."

When the Carrier issued the 1984 seniority rosters for the various classes and groups in the Track Sub-department, the Claimant discovered that his name had been removed from the Group No. 3 Roadway Machine Operator's Seniority Roster. Inasmuch as the Claimant established and held seniority as a Roadway Machine Operator dating from April 6, 1979, a protest was filed contending the Claimant's name should be added to the list. The Carrier responded indicating that because of the June 22, 1983 demotion to the Trackman, the Claimant didn't retain his seniority rights as a machine operator. The Organization disagreed contending the discipline letter didn't apply to machine operator rights. A claim was filed, denied and ultimately appealed to the Board for resolution.

It is the conclusion of the Board that the Claimant should have realized that the discipline was intended to limit his seniority to trackman. Trackman is the lowest classification in pay/rank and since he was demoted to Trackman, it is most logical and reasonable to conclude that this meant the Carrier had no intention of allowing him to be anything but a trackman. If they had intended to allow him to work as a machine operator they would have demoted him to that class. In fact, it is noted the Claimant did not seek to exercise his seniority to any machine operator position at any time between June 22, 1983 and March 1984.

In view that the discipline precluded the Claimant from working as a machine operator and in view of the fact the Claimant should have recognized this, any claim that this was improper discipline should have been filed with 60 days of June 22, 1983. Accordingly, the claim must be denied.

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 17th day of May 1988.