

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: (
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to assist Mr. M. Gardner in the exercise of his seniority when forces were reduced on January 16, 1984 thereby retaining a junior trackman in service at Buffalo, New York [System Case #27.84/012.22 (2nd S-D)].

(2) Because of the aforesaid violation, Mr. M. Gardner shall be compensated for all wage loss suffered at the trackman's rate during the period January 16, 1984 to February 15, 1984."

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 employees 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.

The Claimant was furloughed as a system equipment operator at Delanson, New York on January 16, 1984, and from this date until February 15, 1984, there was a junior employee working as a trackman in Buffalo, New York, whom the Claimant was entitled to displace.

The dispute centers around who is responsible for this fact. The Organization claims that the Claimant asked at the time of his furlough whether he could displace somewhere and was told, "No." The Claimant later discovered the junior employee working in Buffalo and submitted a claim which contained in part, the following statement:

"I was furloughed as a system equipment EPR on January 16, 1984. At that time I was informed by General Roadmaster Paul Ambrozik that I was furloughed. I asked if I could displace anywhere. He told me no. Since that time I was informed that junior employees were working in Buffalo. I still have track rights in Buffalo and should have been offered employment."

The Carrier contended in its Submission:

"A handwritten note by General Roadmaster Ambrozik confirms that a conversation with Mr. Gardner did take place. According to Mr. Ambrozik the question put to him by Mr. Gardner was specific and only addressed availability to obtain a system equipment operator position. Since all such positions were then covered by senior employees, Mr. Ambrozik advises that he told Mr. Gardner no system operators' jobs were available that he could hold."

It is the conclusion of the Board that the claim must be sustained. Rule 3(g) requires that a supervisor assist an employee in re-assignment situations. It states:

"FORCE REDUCTION - RE-ASSIGNMENT

(g) A supervisory officer will assist in the re-assignment of employees when forces are reduced in order that they may be placed in accordance with their seniority rights at the earliest possible date. In order that this may be accomplished with promptness, a supervisory officer will advise each foreman of the number of men to be laid off in each gang on his subdivision."

While the Roadmaster "assisted" the Claimant, the question is whether he gave him accurate information. Based on this record we must resolve this factual dispute in favor of the Claimant. This is because the Carrier did not, on the property, offer any evidence to support its assertions as to the Roadmaster's part in the disputed conversation. Notably the written statement from the Roadmaster, which was claimed to exist, was never produced. Assertion is not enough to overcome the claim.

Accordingly, because there is no evidence to rebut the Claimant's contentions, they stand as fact. Since the Roadmaster gave the Claimant inaccurate information, Rule 3(g) was violated and the Claimant was improperly denied a position to which his seniority entitled him.

Form 1
Page 3


Award No. 27115
Docket No. MW-26554
88-3-85-3-359

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.