

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)
(- Northeast Corridor

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

(1) The Carrier violated the Agreement when it refused to permit Trackman M. Green to displace a junior trackman at Hunter Yard, Newark, New Jersey on November 19, 1984 (System File NEC-BMWE-SD-1188).

(2) The claimant shall be allowed ten (10) hours of pay at his straight time rate."

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 established and holds seniority as a trackman. Effective November 13, 1984, Claimant exercised his seniority and displaced into Gang Z-182 on the Panel Renewal System. Shortly thereafter, on November 15, 1984, Gang Z-182 was abolished. Inasmuch as the abolishment notice for that gang had already been posted on November 6, 1984, Claimant's name was not on the abolishment notice.

On Monday, November 19, 1984, Claimant reported to Carrier's Hunter Yard in Newark, New Jersey, and attempted to displace an employee in the Continuous Welded Rail Unit. The record is uncontroverted that Claimant presented no evidence to show that he had the right to make a displacement, and he was not permitted to exercise his seniority on that date. The displacement was allowed on the following date, November 20, 1984.

The instant Claim is for ten (10) hours' pay for November 19, 1984. The Organization contends that Rule 18 was violated when the attempted displacement on November 19, 1984 was not allowed. Rule 18 reads in pertinent part as follows:

"RULE 18

REDUCTION IN FORCE - RETAINING RANK ON ROSTER

(a) When force is reduced, employees affected shall have the right, within ten (10) days after the effective date of such reduction, to elect to take furlough or to exercise seniority to displace junior employees in accordance with the following provisions of this Rule."

The Organization argues that the foregoing Rule specifically stipulates that employees affected by force reduction shall have the right, within ten (10) days after the effective date of the reduction, to exercise seniority to displace junior employees. Claimant in the instant case was entitled to displace a junior employee as long as he did so within the requisite ten (10) day time period, the Organization maintains, and therefore Carrier's failure and/or refusal to allow Claimant to exercise his seniority on November 19, 1984, was clearly in violation of Rule 18.

Carrier argues that it was incumbent upon Claimant to present his November 13, 1984 displacement slip to show that he had bumped into Gang Z-182 and had a right to displace after its abolishment. It is a routine and well-established requirement on this property that an employee desiring to displace a junior employee must first present some evidence that he possesses a displacement right before the displacement can be permitted, Carrier stresses. In the absence of any evidence that Claimant had a bump right on November 19, 1984, Carrier contends that the Supervisor's decision against allowing the displacement was reasonable and consistent with routine displacement procedures.

The Board notes that both the Organization and the Carrier have included in their submissions to this Board additional evidence and arguments which were not advanced by either party during the handling of this dispute on the property. These have not been considered by this Board consistent with past Awards (see, e.g., Third Division Awards 20178, 20841, 21463, and 22054).

Thus, the issue as it was narrowly framed by the parties on the property is whether the Agreement permits the Carrier to deny an employee's displacement rights if the employee fails to present a displacement slip evidencing his right to bump a junior employee. On that point, Carrier argues that there has been a well-established practice on the property to permit displacement only where the employee presents such evidence that he possesses a displacement right. Such is not contradicted by the Organization in the record before the Board. As the moving party, the burden of proof in the instant case lies with the Organization. (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482). Our review of the record shows that this


burden has not been met. To the contrary, the evidence suggests that Carrier requires some sort of "paper trail" to accompany employees who seek to displace junior employees. Given the size of the work force, the frequency with which seniority rights are exercised, and the geographical distances involved, such a requirement can hardly be deemed unreasonable. Claimant's failure to produce a displacement slip on November 19, 1984, in accordance with those procedures dictates the conclusion that this 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 7th day of August 1990.