

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier failed and refused to permit Mr. M. R. Garcia to displace junior employee Mr. D. M. Esquivel on December 23, 1987 (Carrier's File 880177 MPR).

(2) As a consequence of the aforesaid violation, Mr. M. R. Garcia shall be allowed pay for all straight time and overtime wage loss suffered, including holiday pay, beginning December 23, 1987 and continuing until the violation is corrected."

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 Organization asserts that Claimant, while regularly assigned as Assistant Foreman, was displaced on December 9, 1987, by a more senior employee. According to the Organization, on December 23, Claimant attempted to displace a junior Assistant Foreman, who was temporarily working as a Foreman. The Roadmaster refused to permit this move, thus triggering the dispute herein. The Organization relies on the provisions of Rule 2(f) for its position.

Carrier states that the junior Assistant Foreman was working a relief position and the position in question was owned by another employee, senior to Claimant and in a higher classification. Thus, as Carrier views it, there was no Rule support for Claimant to bump up into an assigned Foreman's position.

It is the Board's view that the Organization has not borne its burden of proof in this matter. The facts to support any Rule violation are not present. Thus, the Claim must be denied.

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 7th day of May 1992.