

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company

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

(1) The Agreement was violated when the Carrier permitted Mr. Bruce Larson to displace Mr. R. Karger from a laborer's position on Floating Maintenance Crew No. X72 on December 7, 1987 (System File R559 #1488K/800-46-B-301).

(2) As a consequence of the aforesaid violation, Mr. R. Karger shall be allowed pay at the section laborer's rate for forty (40) straight time hours and three and one-half (3 1/2) overtime hours. In addition, he shall be allowed appropriate credits for vacation and fringe benefit qualifying purposes."

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.

At the time of the events giving rise to the claim in this case Claimant was working as a track laborer on floating maintenance crew X-72. On December 7, 8, 9 and 10, 1987, the Carrier permitted another employee to displace Claimant from that position. The displacement was not proper under the Agreement. The claim in this case followed.

The Carrier defends its action in this case on the ground that the Roadmaster who allowed the displacement at first believed the displacement was improper under the Agreement but allowed it after the Organization's General Chairman called him to say that the Roadmaster had to let that employee bump Claimant. The General Chairman acknowledges that he and the Roadmaster talked by telephone, but denies that they discussed the request to displace Claimant or that he agreed to the displacement.

This case raises a question of credibility between the Roadmaster and the General Chairman. However, after a detailed review of the record in this case we must conclude that it is insufficient to resolve that issue. Essentially, it is the Roadmaster's word against the word of the General Chairman. Neither of the statements by those individuals is corroborated by record evidence. There are no statements from the employee who displaced Claimant nor from another Carrier official with whom the Roadmaster alleges to have had conversation concerning this matter. The Carrier would have us infer credibility on the part of the Roadmaster simply because prior to the conversation with the General Chairman the Roadmaster viewed the displacement as improper but thereafter allowed it. We do not believe that fact alone is sufficient to overcome the General Chairman's vigorous denial of the events as portrayed by the Roadmaster.

Accordingly, we are left with an admitted violation of the Agreement and little else. In this case it is the Carrier's burden to establish a valid reason for violating the Agreement. The record in this case is insufficient to establish such a defense. Accordingly, the claim must be deemed valid. Although the Carrier has requested application of the principle of mitigation of damages, we have been shown no authority for that proposition.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.