

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29739
Docket No. MW-29347
93-3-90-3-256

The Third Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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 permitted Trackman J. W. Hicks to displace Trackman D. A. Ross from Gang No. 3592 on December 1, 1988 (Carrier's File 890017 MPR).
2. As a consequence of the aforesaid violation, Mr. D. A. Ross shall be compensated for all straight time, overtime and holiday pay wage loss suffered beginning December 1, 1988 and continuing until the violation is corrected. In addition, he shall be made whole for any fringe benefit loss suffered."

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.

In November and December of 1988, a number of jobs were abolished on the Carrier's Joplin seniority district. As a result, employees based upon their respective seniority dates were displacing junior employees. The Claimant, a Trackman on Gang No. 3592, was displaced on December 1, 1988. The Organization contends that Claimant was displaced by Hicks. They further contend that the Carrier violated the agreement in allowing Hicks to exercise his displacement rights more than 20 days after he was furloughed.

Hicks was furloughed on November 4, 1988, and was allowed to displace on December 1, 1988.

Rule 2 (f) of the agreement provides,

"Employees entitled to exercise seniority rights over junior regular assigned employees must designate exercise of such rights within twenty (20) calendar days following their displacement, or their return to service, except an employee who becomes physically disabled during the twenty calendar day period specified herein will be allowed such additional days to exercise such rights as remained in the twenty calendar day period at the time he became disabled. This extension of time in which to exercise displacement rights will be determined from a certificate of a reputable doctor (a Hospital Association staff doctor, if the Carrier so directs), which certificate will indicate the date the disability began and date of recovery sufficient to resume work and providing the disability was continuous during the interim. Otherwise, employees who fail to exercise displacement rights within the twenty (20) calendar days specified herein, shall forfeit their right to displace a regular assigned employee and shall take their place on the furloughed list with preference to work over junior employees thereon, and will be subject to assignment to bulletined positions in line with their seniority."

The dispute centers around whether Claimant was displaced by Hicks, and if not, whether Claimant is a proper claimant in this action. The Carrier argues that Claimant was displaced by Snell and that Hicks displaced Harris. It contends that since Hicks's exercise of displacement rights in no way affected Claimant, Claimant is an improper claimant in this action. During the handling of the dispute on the property, the Carrier provided a copy of Claimant's work history which shows an entry dated December 1, 1988, that Claimant was "displaced by T. J. Snell off Gang 3592 eff. December 1, 1988." The Carrier has attempted to introduce the work histories of Snell, Harris, and Hicks before the Board. However, these items, along with several others, Carrier's Exhibits L through Q, were not provided in the handling of the dispute on the property and, therefore, will not be considered by the Board.

The Organization contends that Claimant was displaced by Hicks. As evidence in support of its contention, the Organization has submitted a letter from Claimant to the General Chairman stating, "Mr. Hicks did exceed more than 20 day (sic) on his vacation. After these 20 day (sic) Mr. Hicks did bump me, Mr. Snell already bumped another guy ahead of me before Mr. Hicks came back, so naturally I was the last on seniority, so Mr. Hicks bumped

me." The Organization also argues that even if the Carrier is correct in its version of the events Hicks' exercise of displacement rights violated the agreement and Claimant is not an improper claimant.

The Board views Claimant's work history to be credible evidence that Claimant was displaced by Snell and not by Hicks. When weighed against the letter that Claimant wrote to the General Chairman, the Board concludes that the Organization has not met their burden in establishing that Hicks displaced Claimant. The Organization has only submitted the selfserving assertions of the Claimant, while the Carrier has submitted a standard printout of Claimant's work history. This appears to be a record kept in the ordinary course of business. The Organization's argument that the relevant entry is not credible because the date of entry is different than the effective date of displacement does not, in the Board's view, discredit the work history.

The next question, then, is whether Claimant is a proper claimant in an action alleging that Hicks' exercise of displacement rights violated the agreement. There is nothing before this Board which indicates that Hicks' displacement of Harris affected Claimant in any way.

The Organization has not argued how, if Hicks displaced Harris and Snell displaced Claimant, Hicks' displacement of Harris affected Claimant. Accordingly, we find not only that the factual underpinning necessary to support the claim is lacking, but also that Claimant is an improper claimant, and the claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.