

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29829
Docket No. MW-29662
93-3-91-3-4

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated when the Carrier refused to allow Track Foreman P. Torres to exercise his seniority in displacing junior Track Foreman C. W. Ogburn from his position at San Antonio, Texas on November 14, 1989 (System File MW-90-10/488-3-A SPE).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be allowed twenty-two and one half (22 1/2) hours at his straight time rate of pay, 1080 miles at the effective mileage rate and the difference in his earnings and that of Track Foreman C. W. Ogburn beginning on November 14, 1989 and continuing until the Claimant is allowed to fill the position in question."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 this dispute arose, Claimant was assigned as a Senior Track Foreman. He was displaced off an I&R Foreman position effective November 14, 1989. Claimant then attempted to displace a junior foreman, but was advised by Carrier that he did not possess the necessary ability or qualifications to displace on the Material Foreman's position. Claimant subsequently successfully exercised his seniority at another location.

The Organization filed a claim protesting Carrier's failure to allow Claimant to displace onto the Material Foreman's position.

At the outset, the Carrier raises a threshold issue that the instant claim is improper, inasmuch as this is the second of two claims filed by the same Claimant in connection with essentially the same facts. The first claim by Claimant is pending before this Division under Docket MW-29560. The Statement of Claim in that dispute reads as follows:

"The Agreement was violated when the Carrier improperly advertised the material foreman position on Vacancy Bulletin No. 022B dated June 19, 1989 (System File MW-89-101/485-72-A SPE).

The Agreement was further violated when the Carrier assigned junior employe C. W. Ogburn instead of senior employe P. Torres to the material foreman position advertised on Vacancy Bulletin No. 022B effective July 24, 1989.

As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. P. Torres shall be assigned to the position in question and he shall be compensated for all wage and seniority loss suffered beginning July 24, 1989 and continuing until the violation in question is corrected."

Carrier asserts that the Organization has filed two claims on behalf of Claimant seeking the same remedy--that he be allowed the Material Foreman position. Accordingly, the claim is procedurally defective and should be dismissed in its entirety.

For its part, the Organization contends that a claim is proper for each and every violation of the Agreement. Thus, multiple claims may be made on behalf of the same claimant so long as they do not arise from the same violation. The Organization maintains that the instant claim arose from a second alleged violation of

Claimant's seniority rights. Thus, it is not duplicative of the previous claim and, therefore, not procedurally flawed.

The facts of the claim pending before this Division as Docket No. MW-29560 are essentially similar to those of the instant claim. Since that dispute has not yet been decided, this Board cannot rely on the principle of res judicata in addressing the Carrier's procedural objection. If the Board sustains the claim in Docket No. MW-29560, its decision renders the instant claim moot. If the panel denies the earlier claim, this Board might have considered the instant claim if the Organization sufficiently had distinguished the facts and circumstances of the instant claim from the claim in MW-29560. A careful review of the record before this Board, however, fails to support the Organization's position that there are material differences between the instant claim and the claim at issue in Docket MW-29560. In the absence of such distinctions, the Organization is collaterally estopped from attempting to gain a "second bite at the apple" before this Board. Accordingly, the instant claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.