

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31205
Docket No. MW-31447
95-3-93-3-430

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Louisville and Nashville 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 allow Machine Operator F.L. Ferrell to displace junior employee J.D. Marlin on the Jimbo Material Handler [System File 13(25)(92)/12(92-557) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F.L. Ferrell shall now be allowed eight(8) hours pay per day at the straight time rate and all overtime lost commencing sixty (60) days retroactive to the March 18, 1992 claim letter."

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.

As stated in the Statement of Claim, Claimant, who was senior to the employee working the Jimbo Material Handler while the machine was working in a district where neither Claimant nor the junior employee had seniority, was denied the right of displacement.

The Carrier contends it has denied the exercise of seniority under similar circumstances, and when challenged as to the practice Carrier cited a specific name and incident. The Organization never responded. Accordingly, the record reveals that the Carrier settled at least one claim where a similar displacement was denied. The Organization, on the other hand, asserted without rebuttal, that the employee cited as the junior employee in this case, displaced to this very same machine while it was outside the district of the junior employee's seniority rights.

Apparently, the handling has not been as consistent as the Carrier would like it to be. Besides, the Rules do not support the alleged practice. Rule 21 is the Force Reduction Rule and reads, in pertinent part:

"Employees affected may displace junior employees in any rank and subdepartment in which they hold seniority on their seniority district ***"

A reading of that Rule lends itself to the Organization's position that the junior employee can be displaced regardless of where the job is at so long as the machine was last bulletined in Claimant's seniority district, and it was.

The claim is sustained with Claimant being kept whole until the junior employee was furloughed or displaced by either an employee senior to Claimant, or by someone in the district wherein the machine was working.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

Form 1
Page 3

Award No. 31205
Docket No. MW-31447
95-3-93-3-430

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.