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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35629
Docket No. MW-32876
01-3-96-3-217**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier allowed Mr. H. S. Acevedo to make more than one (1) displacement on September 7, 1994 without benefit of being displaced a second time on that date (Carrier’s File BMW 95-96 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. A. Guido and all others affected by the improper displacement shall now be returned to their former positions, be compensated for all wage loss suffered and per diem for each day commencing September 7, 1994 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 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 were given due notice of hearing thereon.

Prior to September 7, 1994, H. S. Acevedo was assigned to System Steel Gang No. 3, but effective with the close of the shift on September 6, 1994, Acevedo's position was abolished in accordance with Rule 13(b). On September 7, 1994, Acevedo reported to Surfacing Gang No. 5 and "expressed his desire" to exercise his seniority upon a Ballast Regulator operated by J. F. Romero. Before actually making that displacement a reality, however, Acevedo instead exercised his seniority to displace M. P. Arrizon from a different Ballast Regulator on Gang 55. (Apparently Romero heard "through the grapevine" that Acevedo intended to displace him from Gang 5 and made a preemptive displacement to another gang which was rescinded when he was not actually displaced by Acevedo.) The Claimant in this case is J. A. Guido who was in turn displaced Arrizon from a position on a Ballast Regulator on Extra Gang 45, working near Oakland, California. In this claim the Organization maintains that if the Carrier had not wrongfully allowed Acevedo to make more than one displacement on the same day without having been displaced a second time on that day, the Claimant would not have been displaced by Arrizon.

Careful analysis of the record shows that the Organization failed to make out a prima facie case that Acevedo actually displaced anyone except Arrizon. In that connection, statements presented by the Organization assert that Acevedo told Truck Driver Lopez he intended to displace Romero, but approximately ten minutes later changed his mind "because of medical reasons" and instead displaced Arrizon rather than Romero. There is no evidence that Romero was actually displaced and, despite his aborted preemptive displacement based on hearsay about Acevedo's intentions, Romero actually worked his regular position on Gang 5 on the day in question. There is nothing in the Agreement that provides that an employee cannot change his mind about a position upon which he intends to displace before any action is taken in connection with that decision. Because no violation is persuasively proven, we neither express nor imply any opinion on the Carrier's alternative argument that when an improper displacement has occurred the proper Claimant in line for damages would be the employee immediately displaced rather than an employee further down the line of chain reaction displacements.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of August, 2001.