

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35869  
Docket No. MW-35614  
01-3-99-3-536**

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned the section foreman position advertised by Bulletin ORDO5646 at The Dalles, Oregon to junior employee D. D. Craft and refused to allow employee T. L. Thompson to exercise his seniority rights to said position beginning on April 2, 1998 and continuing (System File J-9820-52/113894).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. L. Thompson shall now be compensated at ‘ . . . the section foreman’s rate of pay starting on April 2, 1998, as if he was worked because Mr. Craft was inappropriately assigned Bulletin ORDO5646. All overtime worked by Mr. Craft beginning on April 2, 1998, is claimed in behalf of Claimant Thompson. All benefits are claimed as if Claimant Thompson was rightfully assigned to The Dalles Section Foreman position on April 2, 1998. This claim is considered continuous until such time as Claimant Thompson is rightfully assigned Bulletin ORDO5646 and is allowed to return to service.”

**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.

The Claimant initially established seniority under the Agreement in 1974. Additional classification seniority was established in 1978 and 1979. In 1984, the Claimant was promoted to the non-Agreement position of Assistant Roadmaster and later to the non-Agreement position of Manager of Track Maintenance.

By letter dated October 7, 1997, the Carrier dismissed the Claimant effective October 1 following a positive drug test for methamphetamine administered on September 19, 1997. The random test sample was collected four days after the Claimant was released from EAP treatment. The right of the Carrier to dismiss the Claimant from the non-Agreement position for cause is not in question.

On April 2, 1998, the Carrier refused to award a bulletined Foreman vacancy to the Claimant as noted in the Statement of Claim. This claim followed shortly thereafter.

The operative facts in this dispute present a pattern similar to those involved in Third Division Award 35868. If the pattern was substantially identical, the disposition here would be the same. However, the instant record reveals a significant difference. It does not establish that the Claimant provided the five-day notice required by Rule 22(c). This notice requirement reads as follows:

"Employees desiring to return from official, supervisory or excepted positions must give management and the General Chairman five (5) calendar days' advance written notice before returning. \* \* \*" (Emphasis added)

As written, the five-day notice is a mandatory condition precedent to the retention of seniority and the ability to return-to-service under the Agreement. The remainder of Rule 22(c) strongly suggests that the five-day notice must be provided during the 60 calendar day period after vacating the non-Agreement position. If not so provided, the context suggests that the Carrier is entitled to treat a former employee as voluntarily resigning from further Carrier service and relinquishing any previously retained seniority under the Agreement. No bargaining history was presented on this record to demonstrate that a contrary interpretation was intended by the parties.

Given the Claimant's failure to provide the requisite notice, the Carrier was not remiss in refusing to award him the bulletined position in question.

The instant record also attempted to raise contentions about the Claimant's entitlement to EAP treatment. They were not raised until more than one year after the Claimant's dismissal and are outside the scope of the instant claim. Consequently, we have made no findings thereon.

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**AWARD**

Claim denied.

**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 18th day of December, 2001.**