

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36522
Docket No. MW-35379
03-3-99-3-251**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway (former Burlington
(Northern 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 Claimant R. L. Hohbein to exercise his seniority to a truck driver position on Region Gang RP-11 on December 30, 1996 in accordance with Rule 21F of the Agreement (System File T-D-1292-H/MWB 97-05-20AB BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall ‘ . . . be granted his contractual displacement rights, and that he be made whole for any and all losses incurred as the result of this violation, including pay differentials, lost work opportunity, including overtime and reimbursement of any away from home expenses incurred.’”

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 facts at bar clearly indicate to the Board that the Claimant began vacation December 3, 1996 and continued through January 2, 1997. While on vacation, the Claimant's Truck Driver position on District 17 was abolished. By Bulletin REG-9701, dated December 1, 1996, the Carrier advertised a Regional Gang RP-11 Fuel Truck Driver position. The Claimant did not see the Bulletin prior to his vacation. There is no dispute that while the Claimant was on vacation, that position was filled by a junior employee. When the Claimant attempted displacement, the Carrier refused, citing the Terms and Conditions applicable to System/Region Gangs as per PEB 219. The Organization disagrees.

It is the position of the Organization that the Claimant's seniority rights were violated when he was unable to displace under Rule 21 F. The Rule holds that:

"Bids will not be accepted from an employee while on vacation, sick leave, or other authorized leave for jobs that are bulletined and closed during such absence. Such an employee will be permitted to displace a junior employee from an assignment secured by bulletin that was posted and closed during the absence of the senior employee, provided he does so within five (5) calendar days upon returning back for service."

The Organization maintains that Rule 21 F supercedes the "Other Conditions" concerning the establishment of Regional or Production Gangs under PEB 219 recommendations. The Claimant was not able to obtain the Bulletin prior to going on vacation and certainly had a right to exercise his displacement upon his return.

The Carrier maintains that the Terms and Conditions, and in particular Section 3(a) "Other Conditions" does not permit the Claimant to displace a junior employee assigned to the regional gang. That section states in pertinent part:

"Employees assigned to the above listed regional or system-wide production gangs, including recalled furloughed employees and new hires

... will not be subject to displacement during the work season by senior employees outside of their own gang.”

The Carrier argues on the property that the Bulletin was properly issued before the Claimant went on vacation and that the Claimant failed to properly attempt displacement following vacation. It maintains that the Terms and Conditions interpreting PEB 219 recommendations and their subsequent implementation are directly applicable and preclude the Claimant’s displacement of a junior employee to the fuel truck position on a Regional Gang. The Carrier denies any violation.

The facts at bar demonstrate that the Claimant failed to properly attempt displacement under Rule 21F. That Rule clearly requires that the Claimant return from vacation and thereafter make displacement within five calendar days “upon returning back for service.” The Claimant’s displacement attempt was premature and without Agreement support. The Claimant could not attempt to bid on the position while on vacation; nor could he displace while on vacation. The language of the Agreement governs. The Claimant’s displacement attempt on December 30, 1996 was not proper. This is consistent with past Awards under the same and similar circumstances between these parties (Third Division Awards 36058 and 35963).

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 23rd day of April 2003.