

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36828
Docket No. MW-35969
04-3-00-3-58

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 failed to allow Truck Operator T. L. Passey to exercise his seniority to a Section Truck Operator position at Blackfoot, Idaho on September 22, 1998 (System File J-9821-58/1164236).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. L. Passey must be compensated ‘... for wages lost beginning on September 22, 1998, until such time as he is rightfully placed on the Sectionman Truck Operator’s position on Gang 6112 at Blackfoot, Idaho.”

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 held an October 2, 1997 seniority date as a Sectionman Truck Operator on Idaho Division Roster 6128. The Claimant's Truck Operator position which he was working was abolished at the close of shift on September 21, 1998. The claim contends that the Carrier violated the Agreement when it did not allow the Claimant to displace to a Sectionman Truck Operator position at Blackfoot, Idaho, on September 22, 1998.

The record discloses that during the summer prior to the incident forming the basis for this claim, the Carrier posted a Sectionman Truck Operator position at Blackfoot several times, but no bids were submitted and the Carrier could not fill the vacancy. Further, according to the Carrier, there was no one on the seniority list to force assign to that position. Rather than run short, the Carrier assigned a second Sectionman to the Blackfoot Section. The record sufficiently shows that at the time the Claimant attempted to bump into the Blackfoot Section, there was no Sectionman Truck Operator working on that section and no Sectionman Truck Operator position had been authorized, as that position which the Carrier was unable to fill had been replaced by the second Sectionman. The Claimant was advised that the position would be rebulletined and he could bid into it, but he was not allowed to bump into the gang because he was junior to the two incumbent Sectionmen. The Carrier rebulletined the position on September 24, 1998 and, according to the Organization, made a proper assignment effective October 1, 1998.

Thus, as the Carrier argues, the Claimant claims bumping rights to a position that did not exist. Rule 21(e) does permit employees whose positions have been abolished to "... displace junior employees in any seniority class in which seniority and qualifications are held." But here, at the time the Claimant attempted to bump into the Blackfoot Section, there was no position for the Claimant to bump into and the Claimant was junior to the other Sectionman on the Blackfoot Section. The claim therefore lacks merit.

The Organization's reliance upon a prior resolution between the parties does not change the result. The prior resolution from August 11, 1986 concerned the ability of senior employees to displace junior employees filling temporary relief positions ("... it was agreed that employees displaced from their regular assigned positions may exercise their seniority over any junior employee working in the group and class involved and they would no longer be prevented from displacing junior employees filling temporary relief assignments. . . ."). That is not this case. No employee was filling a temporary relief assignment. Here, there just was no existing position for the Claimant to bump into.

Similarly, the Organization's argument that the August 16, 1993 Memorandum of Agreement required the Carrier to have a Sectionman Truck Operator assigned to a truck on the Blackfoot Section and that a Section Foreman was improperly assigned to operate the truck at Blackfoot is also not persuasive. The Carrier attempted to fill the Truck Operator position on several occasions and was unable to get bidders for the position. At the time the Claimant attempted to bump into the Blackfoot Section, there was no such position. The Agreement does not require the Carrier to reestablish a position it previously could not fill through bidders (on several occasions) because months later an employee attempts to bump into that position. The Carrier promptly re-bulletined the position on September 24, 1998, which was filled on October 1, 1998. Under the circumstances, that is all that can be required of the Carrier in this case.

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 28th day of January 2004.