

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37481
Docket No. MW-36379
05-3-00-3-577

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 allowed junior employe K. E. Michalski to displace Mr. J. A. Hedrick on System Gang 8576 and when the Carrier refused to allow Mr. Hedrick to exercise his seniority on said gang beginning April 23, 1999 and continuing (Carrier's File 1203071).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. A. Hedrick shall now ‘. . . be compensated loss of wage that he wrongfully suffered as well as out of pocket expenses that he had incurred during the time of the violation, and that the Carrier make all the appropriate adjustments in getting Claimant placed back on his proper position which he held on April 23, 1999.’”

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.

As a result of mergers, employees have a "home road" designation to reflect the railroad on which they were hired and/or hold other Maintenance of Way Department seniority. They carry designations on the relevant seniority lists as "U" (Union Pacific), "C" (CNW), "S" (Southern Pacific), "W" (Western Pacific) and "D" (Denver and Rio Grande).

The Claimant has a hire date of August 16, 1979 on the former Southern Pacific-Western Lines and maintains an "S" designation. At the time of the events giving rise to this dispute, he was assigned to a Group 26 Track Laborer position on System Gang 8576 near Colton, California.

On Friday, April 23, 1999, the Claimant was advised that he was being displaced from his position by an employee with a "U" designation who had a lesser hire date than the Claimant. Following his displacement, the Claimant attempted to exercise his seniority over other employees on the gang holding various designations who had lesser hire dates than the Claimant. When he was not permitted to do so, this claim ensued.

The Organization contends that the Carrier violated Section 4 of the August 1, 1998 Implementing Agreement when it allowed a junior employee to displace the Claimant. Moreover, the Organization argues that the Carrier compounded the problem by refusing to allow the Claimant a displacement on System Gang 8576.

The pertinent Agreement language reads as follows:

"Section 4.

(A) When employees with home road designations and seniority dates of June 1, 1998 or earlier apply for bulletined Group 20, 26, and 27 positions, assignments will be handled as follows:

- (1) When bids are received from only C, S, W, and/or D designated employees, the employee listed on the applicable seniority roster with the superior seniority date/ranking will be assigned.**

- (2) When bids are received from only U designated employees, the employee listed on the applicable seniority roster with the superior seniority date/ranking will be assigned.
 - (3) When bids are received from U designated employees, as well as C, S, W, and/or D designated employees, the senior U designated applicant and the senior employee among the C, S, W, and the D designated applicants will be identified, and the employee with the senior hire date will be assigned.
- (B) The exercise of seniority displacement rights by these employees will be controlled by the same principles explained in Section 4(A)."

The language of the Agreement is clear and unambiguous. Its meaning is readily discernible. The exercise of displacement rights under Section 4(B) is governed by the procedures set forth in Section 4(A). As set forth in Section 4(A)(3) the senior U designated applicant and the senior employee among the C, S, W and D designated employees are to be identified, and "the employee with the senior hire date will be assigned." (Emphasis added) In this case, the Claimant held an "S" designation and had seniority over the "U" designated employee who displaced him. The Claimant was improperly displaced. The Carrier subsequently compounded the problem when it refused to allow the Claimant to displace employees on the gang with lesser hire dates.

The Carrier maintains that the Claimant's seniority should not prevail because a cycle bump would be created. The difficulties of a cycle bump arise when a group of three or more employees can continuously exercise seniority displacement rights over each other. The Carrier argues that this is a problem inherent in the Agreement language and the Organization has resisted attempts to remedy the problem.

If the Carrier's position were adopted, however, the effect would be to rewrite the Agreement so as to modify the contractual right of employees to exercise their seniority. This we cannot do. The Board presumes that understandable contract language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. We cannot create an exception to the Rule of seniority for cycle bumps.

It is significant to note that this matter has been addressed before on the property and has been resolved in the Organization's favor. See Third Division Awards 36962 and 36855. These Awards are not palpably erroneous and will be followed.

The Carrier questions the propriety of the portion of the claim concerning wage loss and travel expenses, pointing out that such expenses are not necessarily covered in the exercise of seniority. Except for the Carrier's violation of the Agreement, however, the Claimant would not have been subject to any time loss or expense. See Third Division Award 36962. Accordingly, the Claimant is to be made whole for actual losses, if any, resulting from his improper displacement from System Gang 8576. The matter is remanded to the parties to determine the extent of that relief. As the Board does not have authority to award injunctive relief, however, that portion of the claim requesting that the Claimant be returned to the gang is hereby denied.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of April 2005.