

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37482
Docket No. MW-36380
05-3-00-3-578

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 Carrier violated the Agreement when it failed to allow Claimant R. Munoz to exercise his seniority over either Messrs. N. O. Rivas, D. John or M. A. Cook on System Gang 8576 beginning May 16 and continuing through May 31, 1999 (Carrier's File 1204173).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Munoz must now ‘. . . be compensated twenty-four (24) hours of straight time at his respective assigned position and sixteen (16) days per diem and any and all overtime that the junior employees worked from May 16, 1999 through May 31, 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 in this case has a hire date of May 16, 1989 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 "compressed half" schedule which required that he work eight days on and eight days off with a 20 minute meal period.

On May 16, 1999, the Claimant was displaced from his regularly assigned Group 26 Laborer position on System Gang 8576 by a senior employee with a "U" designation. There were three "U" designated employees with service dates junior to the Claimant working on the System Gang. However, the Claimant was not permitted to displace any of these employees. As a result, the Claimant exercised his seniority on a different gang. This claim followed.

The Organization contends that the Carrier violated Section 4 of the August 1, 1998 Implementing Agreement when it did not permit the Claimant to displace the "U" designated employees on System Gang 8576 whose service dates were junior to the Claimant.

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) The Claimant held an "S" designation and had seniority over the three "U" designated employees with junior service dates. He should have been permitted a displacement under the Agreement.

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 per diem 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.

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.