

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40382
Docket No. MW-38717
10-3-NRAB-00003-040524
(04-3-524)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier's action in the removal of Mr. B. Mireles' District 4 Trackman seniority date of June 13, 2003 was improper and in violation of the Agreement. (System File 4KB-6840T/1377075 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. B. Mireles shall now ‘. . . have the June 13, 2003 District 4 Trackman Seniority date reinstated. It is also the claim of the Brotherhood that Mr. Mireles be compensated any and all losses suffered due to the Carrier removing the June 13, 2003 District 4 seniority date.’”**

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.

In early June 2003, the Claimant was on furlough from Seniority District 3. While on furlough, the Claimant was awarded the position of District 4 Trackman and reported for work on June 13 establishing a District 4 Trackman seniority date of June 13, 2003. The Claimant was subsequently displaced from this position and returned to his original District 3 position with a Trackman seniority date of October 15, 1996. On July 31, the Claimant was recalled to a District 4 Trackman position, effective August 8, 2003. Rule 14 mandates that the Claimant had until August 18, 2003 to report for this position. On August 6, the Claimant was notified that his District 3 position would end at the close of work on August 13, 2003. In accordance with Article 13, the Claimant had 15 days to displace to another District 3 position. The Claimant determined that he would accept furlough on District 3 and accept the recall to District 4. However, according to the Carrier, he could not report for the District 4 position without effectively forfeiting his opportunity to displace on District 3, thereby potentially losing seven years of seniority on District 3. Consequently, the Claimant, in alleged reliance on the advice of Carrier NPS Staff, chose not to report for the District 4 position so as to maintain his seven years of seniority on District 3. The Claimant was subsequently assigned a Trackman position on District 4, providing the Claimant with a new District 4 seniority date of September 5, 2003.

According to the Organization, the Carrier improperly changed the Claimant's District 4 seniority date from June 13 to September 5, 2003. The Claimant's seniority rights were violated when the Carrier failed to allow the Claimant to exercise his seniority to accept recall to a Trackman position on District 4 after his displacement on District 3. According to the Organization, the Carrier disallowed the Claimant to exercise his seniority to accept the recall to the District 4 Trackman position under threat of losing his Trackman seniority on District 3. As a remedy, the Organization requests that the Claimant's June 13, 2003 District 4 seniority date be reinstated and that the Claimant be compensated for any losses suffered due to the Carrier's removal of the June 13, 2003 seniority date.

The Carrier contends that the Claimant consciously chose to retain the District 3 position and to forfeit his District 4 seniority date of June 13, 2003. If in fact, the

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Claimant relied on allegedly improper advice, which the Carrier contends was correct, the Carrier asserts that this case constitutes an irreconcilable difference of facts and the Board cannot resolve such disputes. The Carrier contends that it acted properly.

The Board finds that the Organization has been unable to meet its burden to prove that the Claimant should have retained the June 13, 2003 District 4 seniority date. Based on the record, the Claimant chose to retain his District 3 seniority, thereby forfeiting his June 13, 2003 District 4 seniority date. The claim is therefore denied.

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 25th day of March 2010.