

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41645
Docket No. MW-41605
13-3-NRAB-00003-110242**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(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 provide Mr. D. Alphin, Jr. with proper and accurate information in regards to his ability to exercise displacement rights after he was displaced from Gang 9185 on December 11, 2009. (System File UP703SN10/1532318 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Alphin, Jr. shall now be compensated at his respective straight time rate of pay for ‘*** four (4) days pay at ten (10) a day for a total of forty hours.’”**

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.

This dispute seeks compensation for the alleged loss of four days' work opportunity due to asserted inaccurate information given by a GMS clerk concerning the Claimant's displacement rights. The Claimant was displaced from his position on System Rail Gang 9185 on December 11, 2009 while working at Marshal, Texas, on a T-2 compressed work schedule. The Claimant contacted GMS Clerk Cameron Gregory to obtain a list of junior employees whom he was qualified to displace, and was given such list. According to the Claimant's statement, he was told by Gregory that he could not make his displacement for five days because all of the gangs that he was qualified to displace onto were on their rest days on a T-1 schedule. In Gregory's statement, he disputes the accuracy of the Claimant's assertion, stating that the process followed is to advise employees that it is incumbent upon them to contact the Supervisor(s) of the gang(s) they plan to displace onto to verify their location, work schedule and report time, because these variables change without notice to the department, and that the Claimant was so advised. The Claimant states that he attempted to call a couple of Supervisors to confirm their schedules but could not get through until December 15, 2009, when he was told by Gang 9115 Supervisor Miller that his gang was working a December 1-20, 2009 schedule in Ozark, Arkansas. The Claimant displaced onto that gang on December 16, 2009.

The Organization argues that the Claimant lost the ability to work on Gang 9115 from December 12-15, 2009 due to the failure of Gregory to provide the Claimant with accurate displacement information. It notes that the Organization does not dispute that it is the Claimant's responsibility to place his bump, and maintains that the Claimant took all steps within his power to do so, but was delayed by the Carrier's misinformation.

Conversely, the Carrier contends that the Claimant's assertion that he was told that he had to wait five days to displace is incredible and does not comport with known policy that it is incumbent upon the employee seeking to make a displacement to contact the Supervisor of the gang that he intends to displace onto to verify the work schedule and location, which can change without notice to GMS. It argues that the Organization failed to meet its burden of proving and Agreement violation, or that the Claimant was given inaccurate information, noting that there was no showing which

Supervisors the Claimant attempted to reach or when. The Carrier relies upon the Claimant's own admission that he made unspecified attempts to contact Supervisors to support Gregory's statement that this is what he was told to do in order to make a displacement. The Carrier contends that any possible loss of work opportunity the Claimant suffered between December 12 and 15, 2009 was not shown to be attributable to any action on its part, but, rather, was as a result of the Claimant's own delay in making contact with Supervisors to verify displacement opportunities prior to December 15, 2009.

A careful review of the record evidence convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement. The Organization acknowledges that it is the Claimant's responsibility to place his bump. The Claimant's statement that he called a few Supervisors but was unable to reach them prior to December 15, 2009 is insufficient, without more, to meet that obligation. It is clear from the Claimant's statement that he understood that he was responsible for checking with gang Supervisors to verify schedule and location information, and that he could not rely upon what he was told by GMS Clerk Gregory alone concerning displacement specifics. The record evidence substantiates Gregory's statement that the Claimant was informed that he had to contact gang Supervisors for updated information and undermines the Claimant's assertion that he was told that he had to wait five days to make a displacement. Thus, the Board concludes that the Organization did not establish that the Claimant's failure to make a displacement between December 12 and 15, 2009 was the result of inaccurate information given to him by GMS Clerk Gregory. Accordingly, the claim must be 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 24th day of April 2013.