

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22972
Docket Number MW-22912

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to permit Group 14 Machine Operator Leon Harper to displace junior Machine Operator Cebern Scott on January 12, 1978 /System File 11-P-589/L-126-1683/.

(2) As a consequence of the aforesaid violation, the claimant shall be allowed the amount of pay he would have received had he been permitted to displace the junior machine operator on the Jordan Ditcher beginning January 12, 1978 and continuing until he is permitted to do so."

OPINION OF BOARD: Claimant was an operator of Group 14 equipment - Heavy Work Equipment - having established seniority in that position on February 22, 1974. On January 9, 1978, his position was abolished and on January 12, 1978 he attempted to displace a junior Group 14 machine operator, who was assigned to a Jordan Ditcher as assistant operator.

Rule 6(c) of the Agreement Governing Hours of Service, Rates of Pay and Working Conditions reads as follows:

"(c) Except as provided in paragraph (b) of this rule, an employee laid off or displaced may displace a junior employee in the same rank and must exercise his seniority in such rank before displacing an employee with less seniority in the next succeeding lower rank in his respective seniority group as indicated in Rule 1. After exhausting seniority in his respective seniority group, he will have the right to return to the seniority group in which he may hold seniority."

On January 11, 1978 the Carrier advised Claimant that he would not be allowed to displace on the Jordan Ditcher and he was furloughed on the next day. On February 17, 1978, the Organization filed the claim now before this Board and referred to a Bruce Livingston as being the junior employee whom Claimant desired to displace. The error in identification was subsequently corrected and Cebern Scott was properly identified as the junior employee.

The Carrier first denied the displacement on the ground that Claimant was not, in fact, senior to the man he desired to displace. The Carrier erred in this regard; Claimant was senior to Mr. Scott, and under Rule 6(c) should have been allowed to displace. The Carrier subsequently raised the defense that Claimant lacked qualifications as a Jordan Ditcher operator, but this Board must reject the defense since it was not timely raised on the property.

Claimant was recalled on March 6, 1978 to a Group 14 position. Thus, between the dates of January 12, 1978 and March 6, 1978, Claimant was aggrieved, since, under Rule 6(c) he should have been allowed to displace the junior employee Cebern Scott. This Board therefore directs that Claimant be compensated at the assistant operator Jordan Ditcher rate for that period, less any outside earnings.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion. -

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1980.