

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23296
Docket Number MW-23083

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Pacific Lines)

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

(1) The Carrier violated the Agreement when it refused and/or failed to permit R. L. Rosendahl to displace a junior laborer on Extra Gang No. 77 on January 19, 1978 (Carrier's File MofW 148-436).

(2) Because of the aforesaid violation, R. L. Rosendahl shall be allowed eight (8) hours of pay at his straight-time rate for January 19, 1978."

OPINION OF BOARD: Claimant entered Carrier's service on April 13, 1976, and established and held seniority rights in various classes within the Track Sub-Department. At the time of this incident, Claimant was a truck driver, Western Seniority Division, Oregon District, and was assigned to Extra Gang No. 62 headquartered at Black Butte, California.

On January 11, 1978, Claimant and all other members of Extra Gang No. 62 were notified in writing by Carrier's Roadmaster at Dunsmuir, California, that their positions were to be abolished. Said communication stated as follows:

"Effective at close of work shift January 18, 1978, your position is abolished. You are entitled to make displacement in accordance with Rule 13, Maintenance of Way Agreement, notifying this office of your choice" (Carrier's Exhibit "A").

Organization contends that "(U)pon being informed of his impending furlough, the Claimant immediately notified Foreman Pettit that he would displace a junior laborer on Extra Gang No. 77 at the start of work on January 19, 1978." Carrier, however, disputes this contention and maintains that Claimant and other members of Extra Gang No. 62 failed to notify the Roadmaster's office at Dunsmuir, California of their displacement choices until said abolishment had been effectuated, thus delaying their reassignment. According to Carrier, "because Roadmaster's Clerk at Dunsmuir had been prepared to handle the 'bumps' in advance of the last day of work..." on January 18, 1978, "...Track Foreman Pettit, in response to Claimant's question

of how to proceed in placing his displacement, advised him to go to the Roadmaster's office at Dunsmuir."

On the following morning, Friday, January 19, 1978, Claimant reported to the Roadmaster's Office at Dunsmuir and requested reassignment. Thereafter, Claimant was assigned to displace a junior employe who held a laborer position on Extra Gang No. 77 at Chelsea, Oregon. Claimant commenced said assignment on Monday, January 23, 1978. Subsequently, Claimant's Organization filed a time claim alleging that on January 19, 1978, Carrier "...failed to allow (Claimant) to make the displacement of his choice and, instead, instructed Claimant to report to the Roadmaster's Office, thereby causing Claimant loss of compensation in the amount of one day" (Carrier's Exhibit "B").

Organization's position in this dispute is that Carrier violated Rule #13 of the parties' current Agreement when it failed to allow Claimant to displace the position of his own choice following the abolishment of his Truck Driver position on Extra Gang #62. According to Organization, Claimant "did not seek assistance as to where he could displace..." but instead "(H)e informed Foreman Pettit that he intended to displace a junior laborer on Extra Gang No. 77." Thus, Organization maintains that Claimant should have been permitted to displace a junior employe on Extra Gang No. 77, and that "Carrier's failure and/or refusal was clearly in violation of Rule 13(b)."

Carrier's position, simply stated, is that, despite Carrier's January 11, 1978 notice, "Claimant made no attempt to displace or even request assistance in securing a position to which his seniority would entitle him to prior to the close of shift January 18" (Carrier's Ex. "E"). According to Carrier, because of the complications involved with the abolishment of the twenty-four (24) positions assigned to Extra Gang No. 62, the affected employes, including Claimant, were directed to notify the Roadmaster's Office at Dunsmuir of their respective displacement preferences because:

"...the Roadmaster's Clerk...was prepared to assist them in locating where they could displace and to see that the employee being displaced was notified so that he in turn could exercise his seniority and displace if he could."

Carrier maintains that Claimant's and other Extra Gang No. 62 members' failure to notify the Roadmaster of their displacement preferences precluded Carrier from making any reassignments immediately upon the completion of the scheduled abolishment on January 18, 1978, because Carrier did not know where such reassignments would be made "...until the senior men had indicated their displacement choices and each of these traced to conclusion" (Employee Ex. "A-1"),

A careful review of the record in this dispute leaves no doubt on the part of this Board that Carrier's position herein must be sustained. Despite Organization's contention that "Claimant immediately notified Foreman Pettit that he would displace a junior laborer on Extra Gang No. 77 at the start of work on January 19, 1978" (Emphasis added by Board), there is not even one bit of substantive or probative evidence in the record to support such an allegation. More importantly, however, even if this particular evidence was available, such a determination would still not negate the fact that Claimant failed to follow the proper notification procedure which was specified in the Roadmaster's January 11, 1978 written notice. Said notice clearly specified that employees desiring to exercise their displacement rights, as per Rule 13 of the Agreement, were to notify "this office" (Roadmaster's office located at Dunsmuir, California) of their choice.

Though Claimant maintains that he notified his immediate supervisor of his desire to displace the junior laborer on Extra Gang No. 77, said notification procedure was not in conformance with the Roadmaster's specifications, and thus was improper.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.