

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25441
Docket Number MS-25396

M. David Vaughn, Referee

(James William Ramsey III
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

- "1. Job Foreman's position, Gang 4, San Jose, went up for bid November 5, 1981, then awarded to William Lusch, junior employee. Claimant Ramsey, returned to work December 2, 1981, then placed proper bid, met all requirements, but wasn't awarded job. Violated all and parts of rules 7, 8, 10 and 12. Due to the fact that improper placement occurred, claimant was left without protected position which resulted in my being displaced improperly.
2. Mr. Juan Ayala, a composite mechanic, who, due to force reduction, was bumped again. Then his attempt (sic) to exercise seniority was denied. In return, claimant Ramsey was displaced improperly and will prove it is in violation of all or parts of rules 7, 8, 10, 12 and 13.
 - A. Why was Ramsey not allowed to advance on two occasions in order to protect him, a senior employee, from displacement during force reductions?
 - B. Why was Ayala denied the opportunity to displace (sic) a junior employee but allowed to bump Ramsey, who is junior to Ayala. However, Ramsey is senior to others who remained and allowed to work during force reductions."

OPINION OF BOARD: Claimant was, at the time of the claim, employed by the Carrier as a Water Service Mechanic Class "A". On December 2, 1981, Claimant returned to duty pursuant to the Award of a Public Law Board. During his absence, a Foreman's position for which Claimant might have been eligible was posted and filled. Claimant's bid for the position was rejected, and Claimant continued to hold the position of Water Service Mechanic Class "A" on Track Gang No. 4 from the date of his return to duty until June 25, 1982.

On May 28, 1982, employee J. Ayala, a composite mechanic who also held seniority in the same classification as Claimant and who had more total and class seniority than Claimant, was notified that his position was being abolished. That employee applied Rule 13(b) of the applicable Agreement to displace a second employee who held the position of Water Service Mechanic Class "A" on Water Service Gang No. 3. When additional reductions in force occurred approximately one month later, Ayala again exercised his seniority under Rule 13(b) and displaced Claimant, who lacked displacement rights to any position then filled. Claimant was, therefore, furloughed after June 25, 1982.

Rule 13(b) states that an employee exercises displacement rights in the following order:

- "1. First, displace any employe in the same class who is junior to him in seniority.
2. Second, if there is no junior employe within that class, displace any junior employe in any other class in which he has established seniority."

Claimant's Organization filed on his behalf a claim that Claimant's displacement was not proper under Rule 13(b) and that Claimant was, therefore, entitled to pay for all time lost as a result of the displacement and restoration of all benefits. The Organization and the Carrier were unsuccessful in resolving the dispute, and Claimant brought his claim to the Board.

The Carrier argues initially before the Board that the assertion that Claimant's displacement was improper as a result of the Carrier's failure to award him the Foreman position is not properly before the Board because it was not raised below and progressed in the usual manner, as required by Section 153, First (i) of the Railway Labor Act. Indeed, a review of the claim and appeal on the property and the Carrier's responses thereto reveals no reference to the Carrier's failure to award to Claimant the Foreman position.

Board precedent is clear that issues not handled on the property before being brought to the Board have not been handled "in the usual manner" and must be dismissed as outside the Board's jurisdiction. See, e.g., Third Division Awards 25131, 24470, 20975, 20472, 20456, and 15063. Accordingly, that portion of the claim which asserts relief based upon the Carrier's failure to select Claimant as Foreman must be, and it is, dismissed.

Since the assertions raised in the second paragraph of the claim were a part of the claim presented on the property and progressed in the usual manner, that portion of the claim is properly before the Board.

Claimant does not contest Ayala's seniority date, which is greater than Claimant's and would, under the Agreement, give Ayala displacement rights if he held his seniority in the same classification. Rather, Claimant contends first, that Ayala did not hold seniority in Claimant's classification and, second, that Ayala could have bumped someone else but was directed by the Carrier to bump Claimant for reasons of discrimination or personal revenge.

The Claimant asserted that Ayala held seniority as a Composite Mechanic and was obligated to exhaust his seniority in that classification prior to bumping into the Water Mechanic "A" classification. The Carrier responded that Ayala had established seniority in the Water Mechanic "A" classification and had properly exercised his seniority to bump into that classification as a result of a reduction which occurred one month before the reduction in which he displaced Claimant. The Carrier asserts before the Board, and the record supports, that Ayala held the classification of Water Mechanic "A", with greater seniority than Claimant, at the time Ayala displaced Claimant.

Claimant, upon whom the burden of proof rests with respect to all aspects of his claim, including showing that Ayala did not hold seniority in the Water Service Mechanic "A" classification, presents no evidence to the contrary. Accordingly, the Board concludes, for purposes of this claim, that Ayala had established seniority in the same classification as Claimant and had greater seniority than Claimant. The Board holds, therefore, that under Rule 13(b) Ayala was entitled to displace Claimant.

Claimant argues, in addition, that Ayala had more than one position into which he could have bumped under Rule 13(b), but that Carrier officials instructed or encouraged Ayala to displace Claimant. Claimant asserts that, in so instructing Ayala, the Carrier was motivated by personal animosity or discrimination against him. There is, however, no support in the record either for the assertion that Rule 13(b) must be exercised in a particular manner or that the Carrier's instruction or encouragement of Ayala, if any, was improper. Indeed, the right under Rule 13(b) belonged to Ayala, to exercise as he chose, to bump any employee with less seniority. There is no support for the proposition that Ayala was required to exercise that right in a way which favored Claimant.

In addition, the Board finds no credible support in the record for the proposition that the Carrier was discriminating against Claimant on the basis of race or any other invidious factor. Rather, the record shows a legitimate exercise by another employee of Rule 13(b) displacement rights, with adverse impact on Claimant as a result of his lower seniority. The Board accepts Claimant's assertion that he believes he was discriminated against, but belief without support is not sufficient to sustain Claimant's burden of proof. Claimant's claim that he was improperly displaced because of Ayala's exercise of his seniority under Rule 13(b) must be, and it is, denied.

Accordingly, the Board dismisses that portion of the claim which asserts that Claimant was improperly displaced as a result of the Carrier's failure to promote him to Foreman; and the Board denies that portion of his claim which asserts that Claimant was improperly displaced because of misapplication of the seniority rules.

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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.