

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25962
Docket Number MW-25682

Herbert L. Marx, Jr., Referee

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

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

(1) The Carrier violated the Agreement when it refused to permit Apprentice Foreman C. Francis to displace a junior apprentice foreman at Crowley, Louisiana on December 7, 1982 (System File MW-83-17/378-89-A).

(2) Because of the aforesaid violation, Mr. C. Francis shall be allowed eight (8) hours of pay at the apprentice foreman's rate for each work day beginning December 7, 1982 continuing until he is allowed to displace a junior apprentice foreman."

OPINION OF BOARD: Some of the circumstances in this Claim are not in dispute. These are as follows:

1. Claimant was furloughed by reason of force reduction from his position as Apprentice Foreman on December 6, 1982.

2. At that time and for some period thereafter, an Apprentice Foreman with less seniority than the Claimant remained in service, and the Claimant's seniority apparently would have entitled him to displace the junior employee.

3. The Claimant appeared in the Carrier's office on December 6, 1982, the day on which he was furloughed.

4. On January 25, 1983, the Claimant appeared in Carrier's office requesting to displace the less senior Apprentice Foreman.

5. The Claimant was denied the right to make such displacement, under the terms of Article 3, Section 1(b).

There remains in dispute the question of what occurred on December 6, 1982. The Claimant states that he was advised that there was no opportunity for him to make a displacement. He states he accepted this information until he learned of the incumbency of the junior employee, which he brought to the Carrier's attention on January 25, 1983. The Carrier, on the other hand, states that Carrier representatives in the office at the time claim that the Claimant made no request for displacement.

Applicable Rules are as follows:

"ARTICLE 3

SECTION 1. (a) When force is reduced, the senior men in the sub-department, on the seniority district, capable of doing the work, shall be retained. Such employees affected, either by position being abolished or being displaced, may displace junior employees of their own rank or class on their seniority district.

(b) Employees displaced account position abolished or reduction of force must exercise their rights to regular position within ten (10) calendar days following date of displacement; failing to displace within the (10) calendar days they shall forfeit their rights to displace a regularly assigned employee and shall take their place on the extra list with preference to work over junior employees thereon.

. . . .

(g) When forces are increased, or in filling temporary vacancies, senior laid off employees in their respective rank, seniority group and seniority district will be given preference in employment. Employees desiring to avail themselves of this privilege and retain their seniority rights must file their name and address in writing with the appropriate division officer, with copy to District Chairman, within ten (10) calendar days of the date laid off, and renew same if address is changed during the period laid off"

The Rules specify that if the Claimant made his initial displacement request on January 25, 1983, it was beyond the time limit specified in Article 3, Section 1(b) and did not require being honored by the Carrier. There remains the question of whether the Claimant requested placement on December 6 and was denied such request by the Carrier, despite the availability of a position, or whether he failed to make such request. The Board does not have the capacity to resolve such contradictory allegations, with the result that the Claim must fail.

The Carrier points out, however, that there would have been a necessary consequence if in fact Claimant had been advised on December 6, 1982 that he could not make a displacement. This is encompassed in Article 3, Section 1(g), which requires laid off employees wishing to be given "preference" in employment to file their name and address with the Carrier for this purpose. The Carrier states without contradiction that the Claimant failed to do so. This casts further doubt on the Claimant's version of what occurred.

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

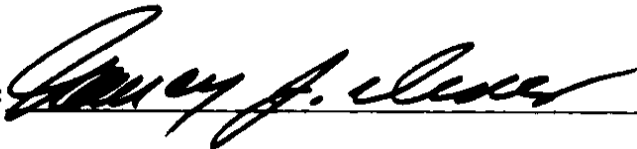
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.