

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26230
Docket Number MW-26196

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it failed to permit Trackman D. R. Snyder to displace a junior trackman on Force 1957 at Huntington, West Virginia beginning May 19, 1983 (System File C-TC-1800/MG-4093).

(2) Because of the aforesaid violation, Trackman D. R. Snyder shall be allowed one hundred twenty (120) hours of pay at his straight time rate."

OPINION OF BOARD: Claimant alleges that he was denied the right to displace a junior Trackman on Force 1957 at Huntington, West Virginia, beginning May 19, 1983, and that he should accordingly be granted 120 hours' pay at the straight-time rate. Carrier argues that, at the time of this incident, there was a practice on the Huntington Division whereby once a temporary force was established, employees were not allowed to displace junior employees working on temporary positions. The work involved was clearly of short duration (a temporary employee was assigned to Force 1957 to correct FRA defects for twenty-two days). Further, Claimant had not requested to work positions of a temporary nature.

The Organization alleges that there was no such practice in effect in May of 1983, and that an Agreement was not reached by the parties on this issue until several years later. Since Claimant was not a furloughed employee, but rather a regularly assigned employee who had been displaced, there was no need for him to request temporary assignments. Claimant was inappropriately denied the right to displace the junior employee and should consequently be compensated.

This Board believes that there was a bona fide practice regarding the displacement of junior employees working on temporary positions at the time this incident occurred. In addition, we must agree with Carrier that Claimant stood to exercise his seniority to other permanent positions but did not attempt to displace immediately into any of those positions. For all these reasons, the Claim must be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1987.