

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26231
Docket Number MW-26198

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 and refused to compensate Trackman T. A. Rakes for wage loss suffered on May 10 and 11, 1983 during which time he was improperly displaced from his assignment as trackman on Force 1958 at Danville, West Virginia (System File C-TC-1785/-MG-4092).

(2) Because of the aforesaid violation, Trackman T. A. Rakes shall be allowed seventeen and one-half (17 1/2) hours of pay at the trackman's rate."

OPINION OF BOARD: The Organization contends that Claimant was improperly displaced from his assignment as a Trackman on Force 1958 at Danville, West Virginia, on May 10 and 11, 1983, and consequently is due 17 1/2 hours pay. This alleged violation of the Agreement occurred when Carrier allowed a Trackman to displace Claimant, rather than a coworker junior to Claimant. Carrier then refused Claimant the opportunity to displace that junior employee.

The facts and arguments presented by both parties in this case are on all fours with those advanced in Award 26230. In that instance, Carrier noted that the work performed by the temporary employee was temporary work, Claimant had failed to file a cut-off notice requesting assignment to temporary or extra work, and he did not seek to displace onto any permanent Trackmen positions.

We determined in Award 26230 that there was a bona fide practice in effect regarding the inability of employees to displace junior employees working on temporary positions once a temporary force was established and that Claimant failed to mitigate any possible damages. We so hold in this case.

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. Dover - Executive Secretary

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