

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26432
Docket Number MW-26318

Elliott H. Goldstein, 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 Agreement was violated when the Carrier failed and refused to permit Mr. S. E. Layne, Jr. to exercise his seniority to displace junior employee J. Utterback on and subsequent to November 21, 1983 (System File C-TC-2061/MG-4472).

(2) Mr. S. E. Layne, Jr. shall be compensated for all wage loss suffered as a consequence of the Carrier's failure and refusal to permit him to displace Mr. J. Utterback on November 21, 1983 and subsequent thereto."

OPINION OF BOARD: On November 18, 1983, Claimant was furloughed. On November 21, 1983, Claimant visited the office of Manager-Engineering Niehaus at Huntington, West Virginia, to exercise or protect his seniority. Mr. Niehaus was not in his office, and therefore the Claimant spoke with his Clerk, Nancy Meade. There are conflicting accounts as to what was said during this conversation. According to the Claimant, Ms. Meade advised him that there were no regularly assigned employees he could displace, but that he could file his name and address in accordance with Rule 5(a) and displace junior employee Utterback, who was performing extra work under the supervision of L. Jayne. Claimant walked down to Mr. Jayne's office and left a note on his desk stating that he desired to perform the extra work. When Claimant did not receive a response, he telephoned the office on Friday, November 25, 1983, and was informed by Ms. Meade that junior employees were working the extra positions, but that he had to contact Supervisor Jayne to displace one of these employees. Claimant then telephoned Supervisor Jayne who advised him that there were no junior employees performing extra work whom the Claimant could displace.

The Carrier's version of these events, which is supported by Ms. Meade's statement, is that she advised Claimant that junior employees were working on the territories of Track Supervisors L. Jayne, J. Hinkle and J. VanderVeer. She then purportedly advised Claimant that he had to contact each of these Supervisors in order to determine if there were junior employees whom he could displace.

Thus, in the Carrier's view, in accordance with the applicable provisions of the Agreement, once Claimant knew from Ms. Meade where the junior employees were located, it was Claimant's obligation to contact the designated Carrier representative regarding his desire to make a displacement. The relevant Rule, Rule 2(s), reads as follows:

"2(s) Displacement Notification.--Employes making displacements under the provisions of Section (h) or (i) of this rule will be obligated to notify the proper representative of the Railway Company to enable them to notify the employe being displaced before he quits work on the day before his displacement becomes effective."

The Organization, on the other hand, has argued that Claimant was never advised that work opportunities existed on Supervisors' territories other than Mr. Jayne's or that Claimant was required to contact other individual Supervisors to determine if work was available in their respective districts. Moreover, even if Claimant had been so informed, the Organization maintains that those instructions would have been in violation of the Agreement, since there is no rule therein which requires an employe to contact each individual supervisor over a large seniority territory to determine if work is available in their respective territories.

Based on our review of the record and Submissions presented, however, we cannot agree with the Organization's position. It is the Board's view that although there is a factual dispute in this case, the instant Claim must fail no matter whether the Carrier's or the Organization's account of the events at issue is credited. This is so because, pursuant to the clear and unambiguous language of Rule 2(s) of the controlling Agreement, the employe is obligated to notify the "proper representative" of the Carrier so that the employe who is being displaced can be properly notified. Several Awards ruling on this point have emphasized that it is the employe's responsibility to notify the proper designated Carrier supervisor; it is not the Carrier's. See Third Division Award Nos. 22517 and 25879. According to the Carrier's uncontroverted evidence, the proper authority or designated representative is the supervisor in each territory.

Thus, in this Claim, regardless of whether or not Claimant was told of the possibility that he could displace junior employes working under other Supervisors within the seniority area, it was Claimant's obligation to notify each of the proper representatives. Since Claimant did not take the necessary steps to preserve his right to displace a junior employe, we must deny the Claim.

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

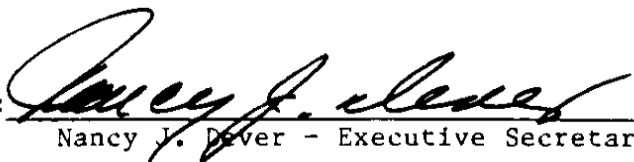
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.