

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(National Railroad Passenger Corporation  
(Amtrak) - Northeast Corridor

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

(1) The Agreement was violated when the Carrier permitted Trackman W. Reed to displace Foreman M. Zimmerman on December 3, 1984 (System File NEC-BMWE-SD-1199).

(2) As a consequence of the aforesaid violation, Mr. M. Zimmerman shall be compensated for all wage loss suffered (straight time and overtime) beginning December 3, 1984 and continuing until he is returned to his position as foreman of Gang A-392."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by Carrier as a Track Inspection Foreman on Gang No. A-392 at Perryville, Maryland. On December 3, 1984, a Trackman, who is senior to the Claimant on the Foreman roster, was allowed to displace Claimant from his Foreman position on Gang No. A-392. The Trackman did not attempt to displace a less senior Trackman, as required by the Agreement, but instead displaced a less senior employe in a higher rank.

Rule 18 of the Agreement prohibits this procedure. Rule 18 in pertinent part reads as follows:

"RULE 18

REDUCTION IN FORCE - RETAINING RANK ON ROSTER

(a) When force is reduced, employees affected shall have the right, within ten (10) days after the effective date of such reduction, to elect to take furlough or to exercise seniority to displace junior employees in accordance with the following provisions of this Rule.

An employee displaced in reduction of force who elects to exercise seniority must exhaust seniority in the class in which employed and successively in lower classes shown on the same seniority roster. An employee who fails to exhaust seniority in any class before exercising seniority in a lower class forfeits seniority in the class in which he fails to exhaust seniority and in all classes of higher rank, except:..." (Emphasis added)

This Board has reviewed the record of this case and concludes that the Carrier erred in allowing the Trackman to displace the Claimant. Carrier's defense that an official of the Organization also agreed that the Trackman could properly bump the Claimant is not worthy of serious consideration. Carrier is responsible for administering the Agreement, and it can not be heard to blame a mistake in application of the Agreement on the Organization. What does mitigate the Claim, however, is the fact that it quickly became common knowledge that a mistake had been made in allowing the Trackman to displace the Claimant and nothing was done about it by either side. Claimant should have immediately displaced another Foreman, which he could have done, and then sought recompense through the grievance procedure. He did not do that. Instead, he took six days to displace another employee.

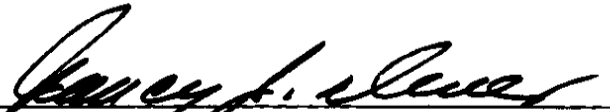
This Board is of the opinion that Claimant was to a degree, as the record indicates, "laying behind the log" in allowing liability to build. He should not have taken that position, but instead should have moved quickly to cut his losses and gotten back on the payroll. This Board concludes that justice will be served in this case by awarding Claimant one single day's pay at the straight time rate. If he would have acted in an expeditious manner and displaced immediately, he could have solved his problem in one day. He chose not to bump immediately at his own peril.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.