

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railway Company
(Northern 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 Foreman T. Weaver for wage loss suffered and for mileage expense incurred on and subsequent to November 5, 1984 during which time he was improperly displaced from his assignment as foreman at Waverly Yard (System File C-TC-2176/MG-4951).

(2) Because of the aforesaid violation, Foreman T. Weaver shall be allowed sixteen (16) hours of pay at his straight time rate, be compensated for the difference in mileage expenses he incurred traveling to the position on which he displaced at Wyoming Yard at Grand Rapids and the distance to Waverly Yard from November 5, 1984 to November 16, 1984 and he shall be compensated for the difference in mileage expenses he incurred traveling to a position at Benton Harbor, Michigan and the distance to Waverly Yard continuing from November 21, 1984 until the claimant is returned to his position at Waverly Yard at Holland, Michigan."

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 regularly assigned as a Foreman at Waverly Yard at the time of the instant dispute. On October 25, 1984, Foreman Robert Brown was cut off due to force reduction on the Grand Rapids Division. Foreman Brown advised his supervisor on October 26 that he would displace the Claimant at Holland, Michigan. Mr. Brown then went on vacation from October 29 through November 2 and displaced Claimant on Monday, November 5. Claimant Weaver thereafter exercised his seniority to a position at Grand Rapids, Michigan.

Two weeks later, he was displaced by a senior employee. As a result, Claimant then exercised his seniority to a position at Benton Harbor, Michigan.

The Organization subsequently progressed the instant claim on the basis that the Claimant was not timely displaced by Mr. Brown, in violation of Rule 7(c). The Organization requests that Claimant be returned to a position at Holland, Michigan, that he be paid the two days lost following his displacement by Mr. Perry, and that he be paid a mileage allowance because of the improper displacement.

Rule 7(c) states as follows:

"(c) Such displacement rights shall be exercised within ten (10) calendar days, unless the employee is prevented by illness or is on vacation or leave of absence when force reduction occurs, in which case the employee will be permitted and required to exercise such rights immediately upon reporting for duty, except as provided in Rule 6(c)."

There is no dispute that the Claimant's displacement by Mr. Brown was beyond the ten (10) calendar day time limit provided in the foregoing rule. The question, and the gravamen of this dispute, is whether the Claimant's subsequent displacements were consequences reasonably flowing from the initial displacement, and, if so, whether damages or other relief are owing to the Claimant.

The parties have not referred the Board to any precedent awards which have previously addressed these issues and we find no language in the Rule itself which specifies the proper remedy when displacement rights are not exercised within the required time. So stating, we are of the view that the Organization has not proven that the Rule 7(c) violation was the proximate cause of the Claimant's subsequent displacements. Put another way, there is no evidence that, absent the one day violation due to Mr. Brown's untimely displacement, the sequence of occurrences following Claimant's displacement would have been any different from that which in fact occurred. Therefore, we must rule to deny this claim.

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 2nd day of March 1989.