

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28140
Docket No. MW-27841
89-3-87-3-354

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when it failed and refused to permit Track Laborer C. Jones to displace a junior track laborer on May 23, 24, 26 and 27, 1986 (System File MW-86-79/455-8-A).

(2) Because of the aforesaid violation, Track Laborer C. Jones shall be allowed thirty-two (32) hours of pay at his straight time rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Organization claims that when the Claimant was displaced on the morning of May 21, 1986, he contacted the assignment office and requested advice as to where he could displace on another gang but was told no one on duty had the authority to assign him. It further asserts the Claimant contacted the office each day through May 28, and was finally allowed to exercise his seniority on May 29. In support the Organization furnished Carrier a statement from Claimant alleging:

"Within an hour after I was displaced, I called Bobby Boudreaux's office to see if there was someone I could bump. Wayne answered the phone and told me Bobby wasn't in. I identified myself, gave my seniority date, and asked him to check the roster and see if there was someone younger than me. After checking the roster, he told me I was the youngest man working and there was no one I could bump.

Realizing I had nowhere to exercise my rights, I discussed with him my one available alternative, working a vacancy bulletin, I had always stayed abreast of available vacancy bulletins and there were at least two open at the time. He told me he could not give me any authorization to work a bulletin. When I asked him when Bobby Boudreaux would be back in, he told me not until the following Monday. When I again asked him if there was any way I could avert missing several days of work, he again reiterated that I would have to resolve that situation only with Mr. Boudreaux."

On August 11, 1986, the Labor Relations Officer countered with a June 11, 1986, statement from the Clerk as follows:

"Mr. C. Jones may have contacted the MofW Office the morning of May 21, 1986 for the purpose of displacing or hold a position on another gang. When people call and identify themselves and tell me what they wish to do in the case of Reduction in Forces or displacements, I do it. However, when people call and do not identify themselves nor make their wishes known, how do I know what they want. In no instances where someone fails to identify themselves, that their wishes are not granted, etc."

On August 14, 1986, the Organization requested a clarification of the last sentence of the statement but apparently received no response.

In handling on the property Carrier argued:

". . . In this instance, Claimant is alleging he talked to the clerk at Lafayette, Louisiana regarding making a displacement. The clerk is denying such an incident ever occurred. Neither you nor I as members of the Third Division NRAB can resolve an issue of disputed facts . . ."

Carrier reasserts that position before this Board.

We agree this Board cannot resolve factual disputes. We do not agree we are faced with such a dispute here. Claimant's statement contains specific dates and detailed accounts of conversations he alleges he had with the clerk. Nowhere in the clerk's statement does he deny Claimant called him. In fact he states Claimant may have done so. Nowhere does he deny the statements attributed to him by the Claimant. Rather the clerk recites what his usual practice is and then asks a rhetorical question. We do not consider the clerk's statement as a denial of Claimant's version of their conversation. Rather we find it non-responsive to the allegations and do not view it as giving rise to testimonial or factual conflict.

Rule 3 of the Agreement provides:

"FORCE REDUCTIONS

SECTION 1. (a) When force is reduced, the senior men in the sub-department, on the seniority district, capable of doing the work, shall be retained. Such employees affected, either by position being abolished or being displaced, may displace junior employees of their own rank or class on their seniority district."

The Organization relies on those Awards which hold a carrier has an obligation to furnish correct information and assistance to employees seeking to exercise seniority to displace junior employees. Carrier takes the position that the Organization made no specific reference to Article 3 in handling on the property and cannot now rely upon it. Again we agree with Carrier's statement of basic principles but question its application. The Claim as originally presented dealt with Claimant's displacement and attempts to obtain information regarding positions he could in turn displace by exercising seniority. We do not agree the Claim before this Board differs from the Claim presented on the property.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.