

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company

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 Sectionman R. Redig to displace a junior sectionman (J. Kollmansberger) on and subsequent to May 9, 1985 (System File R199 #0758R/800-46-B-214).

(2) Regional Engineer G. A. Nilsen failed to disallow the claim, presented to him by General Chairman G. G. Western on June 5, 1985, as contractually stipulated within Agreement Rule 13-1(a).

(3) As a consequence of either or both (1) and/or (2) above,

'Claimant Redig should be reimbursed for all straight time and overtime lost to junior employees on the Sub-district and have all vacation, fringe benefits and other rights restored which were lost to him as a result of the above violation.'

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 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.

At the time this dispute arose Claimant was in a "Free Agent" status as provided by Rule 8(1) reading:

"A sectionman exercising his seniority in case of force reduction, displacing a junior sectionman on another section, must, when general force increase is made and he is so notified, return to his home section.

A sectionman laid off by force reduction and exercising his seniority to displace a junior employee, who is again laid off by a further reduction, or an employee who is unable to place himself because no junior men are working on the sub-district, will be considered a free agent. In order to be eligible to acquire a free agent's status, an employee must have been continuously employed for a period of 30 calendar days prior to force reduction. Time lost in exercising displacement rights or absences of up to 2 days for sickness or other unavoidable causes, would not be considered as breaking the continuity of the 30 calendar days. A free agent who fails to exercise his right to displace a junior employee within 10 days of his first opportunity to do so will forfeit his free agent's status and will be considered furloughed. He will continue to retain his free agent's status until he has returned to his home section and has been continuously employed thereon for 30 calendar days or more.

A free agent may exercise his seniority to place himself when forces are increased on the sub-district, whether on his home section or not, and may continue to displace junior employees on other sections as forces are further increased permitting him to work closer to his home section so long as he exercises such right within 10 days of a particular force increase. It is understood that free agents and furloughed employees must return to their home sections when called."

In May 1985, Claimant gave Carrier a proper notice that he wanted to exercise seniority as a free agent and displace a junior sectionman from Crew 146 at Owen, Wisconsin. Carrier refused to allow the displacement and on June 5, 1985, a continuing claim was filed seeking those reparations set out in Item (3) of the Statement of Claim.

The Organization's Claim was denied by an individual other than the Carrier Officer with whom it was filed. The denial, it was argued, was in violation of the time limit provisions of the Agreement. An appeal was made both on the merits and the time limit issue. With regard to the merits Carrier argued that Claimant had forfeited his free agent status because he failed to exercise seniority in December 1984.

Extensive handling was given the merits of the matter with Carrier eventually acquiescing to the Organization's interpretation of the Rule that the circumstances of the displacement opportunities passed over by Claimant in December 1984 did not establish a forfeiture. Carrier continued to deny the Claim on the basis that it was vague, unspecific and not continuing in nature. Appeal to this Board is on both issues, time limits and merits.

In Third Division Award 27590, involving these same parties, we rejected identical time limit arguments to those involved here. We find Award 27590 persuasive and controlling in this matter, the Organization's time limit arguments are rejected.

On the merits of the matter, it is clear that the Agreement was violated when Claimant was not allowed to displace a junior sectionman at Owen, Wisconsin, effective May 9, 1985. Additionally, we don't find the Claim to be vague and unspecific, as alleged, and it surely meets the test for a continuing claim. Accordingly, Claimant is entitled to be compensated for any wage losses incurred as a result of Carrier's refusal to allow him to displace a junior employee on May 9, 1985. We will award Claimant whatever earnings lost as a result of this violation, less deduction of compensation received during the claim period.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.