

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier failed to correctly inform Mr. D. Koshko concerning his displacement rights and thereby prevented him from exercising his seniority beginning January 5, 1988 (System Docket CR-3821).

(2) As a consequence of the aforesaid violation, Mr. D. Koshko shall be compensated for all straight time and overtime wage loss suffered beginning January 5, 1988 and continuing until the violation is corrected."

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.

The Claimant was notified that his position as Foreman was abolished as of the end of his tour of duty on December 30, 1987. Five days later, on January 4, 1988, he inquired of the Assignment Clerk as to available positions on which he could make a displacement. He was advised that the computer was inoperative, and assistance could not be provided. He again inquired on January 5 and 6 and received the same response.

On January 15, 1988, the Claimant learned of positions held by junior employees on which he could make a displacement. He did not attempt to make such displacement until January 25, at which time such displacement was refused by the Carrier. The refusal was based on the Carrier's contention that the Claimant had exceeded the ten-day period for exercising seniority as provided in Rule 4, Section 2 (b), which reads as follows:

"(b) An employee entitled to exercise seniority must exercise seniority within ten (10) days after the date affected. Failure to exercise seniority to any position not requiring a change in residence shall result in forfeiture of all seniority under this Agreement. If he presents evidence to his supervisor that extenuating circumstances prevented the exercise of seniority, the ten (10) days specified above shall be extended proportionately to the extent of his absence on account of such circumstances. An employee who is unable to so exercise seniority and who elects not to exercise other seniority, shall be furloughed."

The Organization contends that the displacement on January 25, 1988, should have been permitted in view of the "extenuating circumstances" involved in the Carrier's failure to be of assistance when requested on January 4-6. The Carrier responds that the responsibility of the Claimant, previously experienced in such matters, was to make greater efforts at placing himself beyond calls to the Assignment Clerk.

It wasn't until January 15, 1988, that Claimant learned of an employee he could displace, but then did not, for whatever reason, attempt to displace until January 25, 1988, at which time he was properly denied the right to displace because of the ten day time lapse which starts to run the day his job was abolished. The "extenuating circumstances" clause in the Agreement does not entail lack of action in behalf of the employee, however, it may have protected Claimant's right to displace had he done so on January 15, the day he located the junior employee. Under the circumstances, in this dispute, and restricted only to the facts contained in the record before this Board, Claimant is to be paid for all time lost between January 5 and January 15, 1988. The Claim for additional compensation denied due to Claimant's reticence in displacing following the date he knew where and whom he could displace.

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 22nd day of November 1991.