

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. 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 Agreement was violated when the Carrier allowed Mr. E. D. Zietlow to displace Mr. G. Wegener on Crew No. 302 at Hoffman, Minnesota on January 5, 1988 (System File R562 #1488W/800-46-B-303).

(2) As a consequence of the aforesaid violation, Mr. G. Wegener shall be allowed thirty-two (32) hours of pay at his straight time rate, four and one-half (4 1/2) hours of pay at his time and one-half rate and appropriate credits for vacation and fringe benefit qualifying purposes."

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.

At the time of the events giving rise to the dispute in this case, Claimant held seniority within the Track Sub-department and was working a short vacancy in call area Zone 6 at Hoffman, Minnesota. On December 30, 1987, another employee holding seniority in the Track Sub-department but working a short vacancy in call area Zone 4 at Hankinson, North Dakota, gave notice to displace Claimant, who was junior to him, effective January 5, 1988. The Carrier allowed the displacement. The claim in this case followed.

Rule 14(b) of the applicable Schedule Agreement provides in pertinent part that short vacancies will be protected by employees who place themselves upon call lists. The Organization maintains that the displacing employee had not placed himself upon the Zone 6 call list on or prior to January 5, 1988, when the Carrier allowed him to displace Claimant. Accordingly, urges the Organization, the displacement was improper. The Carrier, on the other hand, argues that the displacing employee had placed himself on the Zone 6 call list prior to January 5, 1988, and for that reason the Carrier properly allowed the displacing employee, who was senior to Claimant, to displace Claimant.


The evidentiary record in this case is in conflict as to the critical issue of whether the displacing employee had placed himself upon the Zone 6 call list on or prior to January 5, 1988. As an appellate body, this Board is in no position to resolve such conflict. When faced with an evidentiary conflict as to facts necessary to substantiate the claim, the Board has held repeatedly that the Organization has failed to sustain its burden of proof and that the claim should be dismissed. See Third Division Awards 26224, 26681, 27612, 27738, 27935 and 28138. We reach the same result in this case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devos - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.