

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31253
Docket No. MW-30983
95-3-92-3-909

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

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

- (1) The Carrier violated the Agreement when it omitted the name of Mr. J.A. Blaine from Classes (a) and (b) of Group 8 on the 1991 Oregon Division Seniority District 7008 Rosters (System File S-522/910603).
- (2) As a consequence of the aforesaid violation, Mr. J.A. Blaine's name shall be included on the Oregon Division Seniority District 7008 Roster with a Group 8, Class (a) seniority date of April 17, 1989 and a Group 8, Class (b) August 29, 1988 seniority date."

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 employee 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 outset, the Carrier has raised objections concerning new material offered by the Organization in its submission to the Board. Such material will not be considered by the Board in its deliberations.

This case concerns the removal of the Claimant's name and seniority dates from Group 8 classes (a) and (b) of the Oregon Division Seniority District 7008 Seniority Roster. In March, 1991, Claimant wrote to the Carrier to protest the Carrier's 1991 seniority roster. Under date of May 3, 1991, Claimant was notified that his protest was without merit, because he had failed to protect a force assignment in October of 1990. The Organization filed a claim on behalf of Claimant. That claim was denied and subsequently processed up to and including the highest Carrier officer authorized to handle such matters.

At issue is interpretation of Rule 22(c) of the Agreement between the Parties. Rule 22(c) reads as follows:

"(c) An employee accepting a position in another seniority group will, in the event of displacement or reduction in force exercise his seniority in such other group, and if in the exercise of seniority he is unable to hold a position therein at same or higher rate of pay than he can hold in his former seniority group, he may return to his former seniority group and retain and continue to accumulate seniority in the other seniority group, but must return when recalled to a higher rated bulletined position therein or forfeit all seniority in such other higher seniority group."

It is the position of the Carrier that Claimant was notified of a higher rated bulletined position in October 1990, and that he failed to return to that position, when required to do so. The Organization, on the other hand, asserts that Claimant was never properly notified of the available position. Accordingly, his alleged failure to protect the position is a result of Carrier's failure to notify him formally of his recall to service.

Although the record before the Board is somewhat muddled, it is apparent that Claimant was not formally notified of the October 1990 position. Moreover, it is unrefuted that previously Carrier had provided Claimant with formal notification of recall, but for reasons not apparent on this record, elected to change the usual procedure. Under the circumstances, Carrier is at least equally culpable for Claimant's failure to protect the forced recall. See Second Division Award 11263. Accordingly, the instant Claim is sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.