

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32642
Docket No. MS-32843
98-3-96-3-155**

The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.

(James F. Reed, Jr.

PARTIES TO DISPUTE: (

**(Southern Pacific Rail Corporation (Southern Pacific
(Transportation Co. [Western Lines])**

STATEMENT OF CLAIM:

"The claim involves the Carrier's violations of the provisions of the CBA, including but not limited to Rules 1, 4, 5, 6, 8, 13, and 44, when, on November 1, 1994, the Carrier allowed Mr. Mark Hassell, a less senior employee, to displace Carpenter James F. Reed, Jr., from his assigned position of Carpenter at Carlin, Nevada. In so doing, the Carrier caused Mr. Reed to be placed improperly on furlough status, contrary to the seniority provisions of the applicable CBA."

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 were given due notice of hearing thereon.

The Carrier and the Brotherhood of Maintenance of Way Employees, the Organization, are parties to an Agreement effective October 1, 1973 and revised

January 1, 1993. Carrier and Organization are "representatives" as defined in Section 151, Sixth of the Railway Labor Act and are authorized and required to make and maintain agreements concerning rates of pay, rules or working conditions, and to settle all disputes involving application and interpretation of the Agreement, under Section 152, First of the Railway Labor Act.

Claimant raises the issue of relative seniority between Claimant and M. L. Hassell in Class 26 Carpenter in the B&B Subdepartment, Sacramento Division (Eastern District) of Carrier's Western Lines Maintenance of Way and Structures Department. Effective January 17, 1994, Claimant displaced Mr. Hassell from his assignment as Carpenter at Carlin, Nevada, with the result that Hassell was furloughed. The Organization filed claim with the Carrier on behalf of Mr. Hassell, alleging that in allowing Claimant to displace Hassell, Carrier improperly placed Hassell in furloughed status. That claim was progressed and ultimately conferenced on the property pursuant to Section 152, Second of the Railway Labor Act. During that conference, Carrier and Organization resolved the dispute by entering into an Agreement dated September 12, 1994 by which Mr. Hassell was placed ahead of Claimant in seniority as Class 26 Carpenter. The Agreement provided for Hassell to displace a junior employee in that class and district upon completion of return-to-duty physical. The Organization agreed that it would not progress claims on behalf of any other individual affected due to the chain of displacements resulting from Mr. Hassell's return to active service.

On the date Claimant filed his claim, he was on a seniority roster under the Collective Bargaining Agreement between Organization and Carrier. Mr. Hassell held a higher seniority position on the roster.

Claimant seeks in effect to contest the validity of the September 12, 1994 Agreement between Carrier and Organization, Claimant's collective bargaining representative. It is well settled, however, that this Board does not have jurisdiction to resolve such disputes. Section 153, First (i) of the Railway Labor Act limits the jurisdiction of this Board to "... disputes ... growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." This Board has jurisdiction to interpret and apply, but not to consider the legality of agreements entered into between Carriers and Organizations as representatives under the provisions of the Act. Third Division Award 25554. Claimant's dissatisfaction with the terms of the September 12, 1994 Agreement states a case over which this Board lacks jurisdiction. Third Division Awards 21853, 26074.

Our review of the record discloses no violation of the parties' Collective Bargaining Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 1998.