

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33475
Docket No. MW-32336
99-3-95-3-195**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier improperly removed Mr. R. Glenn’s name from the 1994 Track Foreman Seniority Roster as posted on January 1, 1994 (System File 1994-6/013-293-15).

(2) As a consequence of the violation referred to in Part (1) above, the Claimant’s seniority shall be reinstated and his name returned to its proper place on the Track Foreman’s Seniority Roster.”

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.

Claimant established seniority as a track foreman on December 23, 1976. On May 14, 1993, Claimant bid down and was awarded a position as Machine Operator. Carrier maintained that by doing so, Claimant forfeited his Track Foreman seniority. Consequently, on January 1, 1994, Carrier omitted Claimant from the Track Foreman

seniority roster. Claimant filed a timely protest of his omission.

Carrier relies on the following provision of the Agreement of July 1, 1989:

"NOTE: It is understood that employees with established seniority dates on both the Foremen's and Large Machine Operators' Seniority Rosters on the signatory date of this Agreement will not be assigned nor will they be required to exercise seniority (bid or bump) to Foremen positions in order to retain both seniority dates. However, if after the effective date of this Agreement, such employees voluntarily exercise seniority (bid or bump) to a Foreman's position, they must, thereafter, exercise their seniority rights in such rank before displacing employees with less seniority rights in succeeding lower ranks (including Group 1(b) established herein) in order to retain their Foreman's seniority consistent with the 'Schedule Agreement.'"

Carrier's reliance on the above quoted provision is misplaced. The July 1, 1989 Agreement did not provide for Claimant's forfeiture of his Foreman's seniority in the instant case because Claimant did not displace an employee in the Machine Operator classification. Therefore, Carrier erred in omitting Claimant from the Foreman's seniority roster. See Third Division Awards 33209, 32398.

AWARD

Claim sustained.

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 22nd day of September 1999.