

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35759
Docket No. SG-35690
01-3-99-3-632

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen:

Claim on behalf of E. R. Sherrod, for compensation at the Maintainer's rate of pay for all straight time and overtime hours worked by the Claimant between November 7, and December 4, 1997; and claim on behalf of E. Hayes for payment at the Signalmen's overtime rate of pay for all overtime worked by Mr. Sherrod between November 7, and December 4, 1997, account Carrier violated the current Signalmen's Agreement, particularly Rule 13, when, on November 7, 1997, Carrier instructed Mr. Sherrod to exercise his seniority and forced him to displace Mr. Hayes as Signalman on the Odenton, Qwest support gang. Carrier File No. NEC-BRS(S)SD-788. General Chairman's File No. RM3182-65-0798. BRS File Case No. 11053-NRPC-S."

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.

This claim filed on January 3, 1998 protests the requirement that Claimant Sherrod exercise his displacement rights under Rule 13 on November 7, 1997, and the corresponding affect such exercise had on Claimant Hayes who was displaced by Sherrod. It requests that both be made whole for any loss of earnings suffered for their time out of position.

The record reflects that Maintainer J. A. Budrecki advised the Carrier in May 1997 that he required a lengthy medical leave of absence commencing June 4, 1997. The Carrier advertised his impending vacancy on May 26, 1997, which was awarded to Claimant Sherrod effective June 12, 1997. Budrecki returned from medical leave on November 7, 1997 to his former position, being senior in the class to Sherrod. Claimant Sherrod exercised his seniority by displacing Claimant Hayes in the lower-rated Signalmen's classification, although he was senior to many other Maintainers. Claimant Hayes, in turn, displaced a junior Signalman.

The Organization argues that the Carrier required Sherrod to exercise his seniority and displace an employee without any of the triggering events listed in Rule 13 occurring. It asserts that because Sherrod bid on a vacancy prior to Budrecki's leaving, such position was not Budrecki's former position. The Carrier contends that it complied with the posting requirements of Rule 12(b) in advertising Budrecki's position, which it knew to be in excess of 30 days, and that Budrecki was entitled to return from medical leave to his former position under Rule 16. The Carrier argues that because Sherrod was displaced by a senior employee (Budrecki), he was required to exercise his seniority under Rule 13.

The following portions of Rules 12(b), 13 and 16 are relevant to a determination of the merits of this claim.

"Rule 12 - Bulletin and Assignment

(b) Temporary positions and temporary vacancies, when it is known they will be of more than 30 days' duration . . . shall be advertised as though they were permanent positions or vacancies and filled in accordance with the foregoing.

Rule 13 - Exercise of Seniority

(a) Displacement rights may be exercised by an employee:

* * *

(2) when displaced by a senior employee;

Rule 16 - Return to Duty

After absence due to leave of absence . . . an employee must return to his former position, if not abolished or filled by a senior employee in the exercise of seniority. . . .”

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving that the Carrier violated Rule 13 by requiring Claimant Sherrod to exercise his seniority on November 7, 1997, which in turn displaced Claimant Hayes. We agree with the Carrier that its posting of Budrecki's position on May 26, 1997 was in accordance with its obligations under Rule 12(b), because it had prior notice of the lengthy impending vacancy caused by Budrecki's departure on June 4, 1997. The actual posting notes that it is, in fact, Budrecki's position that is being referred to. Further, the June 3, 1997 award notice for such position reveals that Sherrod was to assume it effective June 12, 1997, after Budrecki's departure. Budrecki's return to that position on November 7, 1997 was mandated by Rule 16, because he was senior to Sherrod who was then occupying the position. Thus, the requirement that Sherrod exercise his seniority rights under Rule 13 was caused by his being displaced by a senior employee (Budrecki), a specific triggering event under the language of that Rule. Accordingly, the Organization's theory of the case is without merit. The record does not make clear why Sherrod chose to displace Hayes, a Signaller, rather than remaining in the Maintainer classification.

In any event, he was entitled to do so and any affect on Claimant Hayes was in accord with the proper exercise of rights under the Agreement. The Board can find no violation of the Agreement in this case.

Form 1
Page 4

Award No. 35759
Docket No. SG-35690
01-3-99-3-632

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 24th day of October, 2001.