

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36054
Docket No. MW-33283
02-3-96-3-769**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway (former Fort
(Worth and Denver Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly allowed Mr. P. Ramirez to displace Section Foreman V. T. McKay at Plainview, Texas on August 7, 1995 (System File F-95-20/MWD 95-10-26AA FWD).**
- (2) As a consequence of the aforesaid violation, Mr. V. T. McKay shall be restored to the foreman's position at Plainview, Texas and he shall be compensated “*** one hundred forth (140) miles each day, at thirty cents a mile, for a total of Forty Two (\$42.00) dollars a day, and further that he be compensated four and seven tenths (4.7) hours each day at this respective time and one half (1½) rate of pay (computed at two minutes a mile personal travel time) for each day he is forced to work away from his headquarters at Plainview, Texas.’ beginning August 7, 1995 and continuing until the violation ceases.”**

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 parties have diametrically opposing assertions about the focus of this claim. The Organization and the Claimant contend that P. Ramirez exhausted his displacement rights when he bumped and actually filled the Foreman position on August 4, 1995 that was held by Foreman Roach on the Amarillo Spot Patrol Gang. As a result, Ramirez was not legally entitled to bump the Claimant's position at Plainview on August 7, 1995. The Carrier, on the other hand, maintains that Ramirez canceled his plans to bump Roach and did not actually work in Roach's position - instead, Ramirez filled a vacant position on August 4, 1995 and Roach worked his own position and was not bumped. As a result, Ramirez did not exhaust his entitlement to exercise seniority and was legal to bump the Claimant at Plainview on August 7, 1995.

When the Carrier refuted the Organization's assertions, the Organization was required to support its contentions with probative evidence. It failed to satisfy this burden of proof obligation. Consequently, we must deny the claim.

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 21st day of May, 2002.