

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36220
Docket No. MW-35700
02-3-99-3-640

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier allowed Mr. V. J. Middlestead to improperly displace Section Foreman C. A. Schlader at Aberdeen, South Dakota on October 20, 1997 (System File T-D-1448-H/MWB 98-02-04AD BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Schlader shall now ‘ . . . be returned to his assignment as section foreman immediately and that he receive eight hours pay for each work day beginning October 20, and continuing until such time as he is returned to his section foreman’s position on the Aberdeen, North track section. We further request that Claimant receive pay equal to any overtime worked by Mr. Middlestead or any other person assigned to his section foreman’s position during claimed period of time. Pay is to be at the section foreman’s rate of pay. If Claimant suffered any out of pocket expense as the result of this violation, including unpaid mileage, away from meal and lodging expense, along with unpaid travel time, this claim also seeks that Claimant be made whole for those losses.’”**

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 record shows a notice dated October 4, 1997 abolishing four positions on Seniority District 14 Gang 443-718, including that of Foreman, to be effective on October 17, 1997. According to the Carrier, this abolishment occurred as stated; the Foreman exercised his seniority to displace the Claimant in a Track Foreman position on October 20, 1997; and the Claimant displaced to another position the same date.

Assuming the facts to be as stated, above, the Organization has no dispute with the sequence of events. The Organization, however, contends that the Foreman position on Gang 443-718 was not abolished on October 17, 1997 and that another employee filled the position commencing October 20. As a result, the Organization contends that, because the Foreman position was not abolished, the Foreman in the position up to October 17, 1997 had no right to displace the Claimant.

The sole evidentiary support provided by the Organization is a Master Namelist dated November 6, 1997. This shows two entries for the employee alleged to have been placed on the Gang 443-718 Foreman's position on October 20. First, it shows this employee to be assigned as a Group 3/4 Machine Operator. Second, an entry under "Rule 19" shows the employee's name aligned with that of the disputed Foreman position. The resolution of these two entries was not explained to the Board. As the Carrier emphasizes, however, this is a Master Namelist for a date some 17 days after the date asserted by the Organization.

In response, the Carrier provides a comprehensive Work History Report for the employee. This shows his Regular Assignment from September 15 to November 14, 1997 as a Group 3/4 Machine Operator. It also shows, under "Other Assignments," that the employee was assigned to the position in dispute from October 27 to November 14, 1997. Once again, the Board is provided with no explanation of the significance of these two assignments.

What is totally lacking, however, is any showing that (1) the abolishment of the four Gang 443-718 positions, including that of Foreman, did not occur on October 17, 1977 or (2) that anyone, including the employee named by the Organization, occupied the Foreman position on October 20.

The Organization failed to demonstrate that the Carrier improperly permitted the Gang 443-718 Foreman to exercise his seniority by making a displacement on October 20, 1997.

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 September 2002.