

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36565
Docket No. MW-35936
03-3-00-3-15

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier allowed junior B&B Carpenter J. Warmowski to displace senior B&B Carpenter M. Woytasczyk from his position on System Gang 9332 on October 13, 1998 (System File MW-99-33/1167584 MPR).
2. As a consequence of the violation referred to in Part (1) above, B&B Carpenter M. Woytasczyk shall be allowed the difference in pay between the system bridge carpenter's rate and the division bridge carpenter's rate, including all overtime pay and all per diem allowance, beginning October 13, 1998 and continuing.”

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.

As background, this dispute had its genesis in the merger of the Southern Pacific Rail Corporation (Southern Pacific Transportation Company (EL and WL)), St. Louis Southwestern Railway Company (SSW), SPCSL Corporation, and the Denver & Rio Grande Western Railroad Company (DRGW) (SPRR) into the Union Pacific Railroad Company/Missouri Pacific Railroad Company (UPRR/MPRR), approved by the Surface Transportation Board in Finance Docket No. 32760 effective September 11, 1996. An Implementing Agreement between the parties effective January 1, 1998 followed placing the former SPCSL, Missouri Kansas Texas Railroad Company (MKT), Oklahoma Kansas Texas Railroad (OKT), SP(EL) and SSW territories under the collective bargaining Agreement between the Union Pacific Railroad (former Missouri Pacific) and the Organization.

The merger required the daunting task of putting together the seniority lists of the five separate railroads. Further complicating the matter was that under the MP Agreement, employees working on system bridge gangs were given system roster seniority dates which were separate from their division roster seniority dates, while under the SP(EL) Agreement, employees established only division roster seniority dates and bid onto system bridge gang jobs with their division roster seniority dates. The Implementing Agreement gave all prior MP employees holding seniority on a system seniority roster on or before September 12, 1996 prior rights to system gang positions. Employees of the former MKT, OKT, SSW and SP(EL) who were actually working on system type gangs on September 12, 1996 were also given prior rights designations. All five of the General Chairman on the prior territories had to agree on whether an employee was entitled to prior rights (referred to as a "bubble" - a marking on the seniority roster with a "B").

The Claimant is a prior SP(EL) employee. The Claimant asserts that he had a system seniority date of February 16, 1979. However, as the parties initially attempted to put the lists together, the Claimant was not designated as having prior rights. The Claimant (as did many others) filed protests. The Claimant filed protests on May 15 and June 12, 1998 asserting that he was entitled to system prior rights and thus entitled to the bubble.

Ultimately, on March 12, 1999, the five General Chairman and the Carrier agreed that the Claimant was involved in bridge work on September 12, 1996 and was

therefore entitled to the prior rights bubble designation. The Agreement making that determination in the Claimant's favor, further stated:

"This handling which may result in a seniority date being established or a change being made to the roster will not be subject to further protest, nor will the Carrier be liable for any time claim arising out of this handling."

This claim arose prior to the date the Claimant was given prior rights. On October 13, 1998, the Claimant was bumped from his Carpenter position on a system gang working near San Antonio on the former SPE territory by B&B Carpenter J. Warmowski. Although junior to the Claimant (Warmowski had a seniority date of December 22, 1995 on a system roster), at the time of the bump, Warmowski was designated as having prior rights and the Claimant had not yet received his designation. As a result of the bump by Warmowski, the Claimant was forced to bid onto another B&B position which, according to the Organization, was at a lower hourly wage and did not include a per diem allowance. This claim followed.

Thus, although the Claimant ultimately was found to have greater system seniority than Warmowski, at the time the dispute arose, the Claimant's prior rights had not yet been finally resolved. When the Claimant's seniority rights were subsequently resolved on March 12, 1999, the parties agreed that "[t]his handling which may result in a seniority date being established or a change being made to the roster will not be subject to further protest, nor will the Carrier be liable for any time claim arising out of this handling." That waiver relieves the Carrier of any liability as a result of the establishing of the Claimant's seniority rights. On that basis, this claim must be denied.

AWARD

Claim denied.

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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 16th day of June 2003.