

**\*\*CORRECTED\*\***

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 38348  
Docket No. MW-37333  
07-3-02-3-282**

**The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division**

**PARTIES TO DISPUTE:** (

**Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

1. **The Agreement was violated when the Carrier removed Claimant V. M. Quiroz’ track machine operator (TMO) seniority on October 11, 1999 (System File D-0017-14/210-17).**
2. **As a consequence of the violation referred to in Part (1) above, the Carrier shall restore Claimant V. M. Quiroz’ seniority standing on the TMO roster as it was listed prior to the October 11, 1999 removal.”**

**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 an initial note, it is well settled by controlling authority that the Board has no power to impose principles of equity or justice. Our responsibility and obligation is to interpret and apply the provisions of the Agreement between the parties as written. Nor are we clothed with any authority to rewrite the Agreement in favor of either side to the dispute, for to do so would deprive them of the bargain struck. With this principle firmly in place, we now review the relevant facts and authority set forth in the record of this case.

**The relevant facts of this case are not in dispute.**

**Claimant Veronica M. Quiroz acquired a Group 10 Roster 2010 Track Machine Operator (“TMO”) date of July 22, 1999 following her assignment to a TMO position headquartered in Laramie, Wyoming.**

During the months of September and early October 1999, the Claimant held a regularly assigned second shift Tongman position at the Panel Plant in Laramie, Wyoming. While holding the Tongman position, the Claimant was recalled and assigned to a higher rated Group 10 TMO position pursuant to Rule 20(e). Instead of immediately releasing her to report for her newly assigned position, the Carrier availed itself of its rights under Rule 23 and elected to temporarily hold the Claimant on her Tongman position.

During such time as the Claimant was being held on the Tongman position, she became the successful bidder to a first shift Tongman position at the Panel Plant, a position she deemed preferable to the Group 10 TMO position. The Claimant was released to begin her new assignment as a first shift Tongman. The Carrier removed the Claimant’s TMO seniority date effective October 11, 1999.

In or about January 2000, the Claimant became aware of the fact that the Carrier had removed her seniority date from the TMO roster. The Claimant responded by filing a protest pursuant to Rule 17. The Claimant’s protest was formally presented by the General Chairman in a letter dated April 2, 2001. While the Claimant admittedly was not thrilled about being assigned to the higher rated

Group 10 TMO position because it was a less desirable position with respect to location, work hours, etc., she maintains that she did not refuse the assignment to the Group 10 TMO position, she merely exercised her rights under the Agreement and bid to a position that was more appealing. The Claimant further maintains that had she not been assigned to the first shift Tongman position following her successful bid to such position, she would have reported for the TMO position to which she had been recalled.

It is the Carrier's position that the Claimant's actions, coupled with her signed statement, clearly indicate that she did not wish to protect her TMO seniority when recalled to the higher seniority class and accordingly, it properly removed her seniority date pursuant to Rule 23.

Rule 23 (Restoration of Force) provides in relevant part:

"(b) Employes regularly assigned to a lower class who are recalled to a higher seniority class must return to such higher class at the first opportunity or forfeit seniority therein. Such employes will be released to report to the higher class position on the first day of the assignment's regular work week or as soon as provisions can be made, but, in no event, shall the employe be held on the former position for more than ten (10) calendar days from date of assignment."

The language of Rule 23 is clear and unambiguous, requiring employees to report to the higher class at the first opportunity. The consequences for failing to do so are also clear – forfeiture of seniority in the higher class. Applying the requirements of Rule 23 to the facts at hand, it is clear that the Claimant's first opportunity to report for the Group 10 TMO position was at such time as she was released from the second shift Tongman position. However, rather than report for the TMO position, the Claimant elected to report for the first shift Tongman position. Given this scenario, Rule 23 requires forfeiture of the Claimant's TMO seniority. The Board therefore finds that the Carrier's action with regard to the Claimant was taken in compliance with Rule 23.

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Having found that the Organization failed to prove any violation of the Agreement, the Board 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 5th day of September 2007.