

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39317
Docket No. MW-37648
08-3-NRAB-00003-020786
(02-3-786)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted junior employes V. Rhoden and S. Weatherspoon, Jr., to work on Gang 6XR1 beginning December 2, 2001 through January 11, 2002 instead of Mr. R. Chancey. [System File D21700502/12 (02-0060) CSX]**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Chancey shall now be compensated for ten (10) hours' straight time pay for each workday beginning December 2, 2001 through January 11, 2002.”**

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 claim arises in a Claimant contention that the Carrier violated the terms of the Agreement when it permitted V. Rhoden to work as an Assistant Foreman and S. Weatherspoon as a Track Repairman to the exclusion of the Claimant.

In a statement of claim as filed on the property by the Claimant, he described the basis for his continuous claim to be as follows:

“The Company worked an employee with less seniority than myself on a (SPG) gang R-1 in Union City, Ga. I contacted the CSXT Roll Hotline (1-888-279-7655). The CSXT Roll Hotline informed me that there was no one with less seniority than me on R-1.”

The Board thoroughly studied the record developed on the property and found nothing to show the date the Claimant allegedly contacted the Roll Hotline and, if he did, who it was that he talked with and is purported to have told him no one with less seniority than him was on the R-1 gang.

The Board also questions the Claimant having filed the above mentioned claim in a contention on the Claim Form as submitted that the violation occurred “11-12-01 until 01-11-02,” whereas the claim as progressed and here presented is for the period December 2, 2001 through January 11, 2002.

It also seems questionable as to why it would subsequently be offered that Rhoden was junior to the Claimant and working when, according to the record, Rhoden has seniority as an Assistant Foreman, which the Claimant does not. And, as concerns Weatherspoon, when he was displaced from his position as a Trackman on Gang 6XT2 on November 11, 2001, he exercised his seniority rights to a Trackman position on the R-1 winterization program, while it appears the Claimant did not so exercise his seniority.

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In this latter regard, it is also noted, as the Carrier submits, the Claimant was actively employed on force 6JH9 during the majority of the claim period.

Because the Claimant failed to provide sufficient facts of record in support of his claim, we have no alternative but to 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 29th day of September 2008.