

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 43426
Docket No. MW-42572
19-3-NRAB-00003-140263

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference

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 failed and refused to allow Mr. J. Blankenfeld, following his displacement as speed swing operator on System Gang 8769 on January 12, 2013, to exercise his seniority and displace junior employee L. Kuhnle as a laborer on System Gang 8957 on January 15, 2013 (System File G-1318U-01/1580984).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Blankenfeld shall now ‘*** be compensated for all the hours employee Kuhnle worked on the date claimed, at the applicable rate of pay and Travel Allowance for his round trip from Colton, CA to his residence in Omaha, NE on January 15, 2013 and from is (sic) residence in Omaha, NE back to Colton, CA on January 24, 2013, when the supervisor denied him the opportunity to work.”

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.

On January 11, 2013, the Claimant was displaced from his speed swing operator position on Gang 8769. The Claimant continued to work extra on Gang 8769. On January 14, 2013, the Claimant contacted Supervisor G. Nelson for the purpose of possibly exercising his seniority on January 15, 2013, by displacing a junior employee as a laborer on Gang 8957. At that time, the Claimant was told by Supervisor Nelson that the Gang would not be working on January 15, 2013 due to the T-2 observance of the January 1, 2013 holiday. It should be noted that the next work day for Gang 8957 was January 24, 2013. On January 14, 2013, sometime after the discussion between Supervisor Nelson and the Claimant, Supervisor Nelson was notified to seek volunteers for overtime work on January 15, 2013. One of the employees volunteering for the overtime on January 15, 2013 happened to be the employee the Claimant was looking to displace on Gang 8957.

The issue before the Board is whether the Carrier denied the Claimant an opportunity to exercise his seniority and displace a junior employee from Gang 8957 on January 15, 2013.

The Organization argues a) Supervisor Nelson provided the Claimant with incorrect information regarding the work activities of Gang 8957 for January 15, 2013, b) because of the misinformation provided by Supervisor Nelson, the Claimant was forced to delay his displacement on Gang 8957 until January 24, 2013, c) the Carrier's failure to properly notify the Claimant of his displacement opportunities resulted in the Claimant suffering a loss of work opportunity and a loss of travel allowance, and d) Supervisor Nelson fabricated the truth and manipulated the Claimant to believe the Gang would not be working on January 15, 2013, when January 15, 2013 was actually a regular assigned work day for Gang 8957.

The Carrier argues a) the Claimant was not misled or lied to by Supervisor Nelson. At the time the Claimant spoke with Supervisor Nelson, there was no planned work for the Gang on January 15, 2013, as it was to be observed as the January 1, 2013 holiday. It was only after Supervisor Nelson's conversation with the Claimant that he was advised to seek volunteers for previously unplanned overtime work on January 15, 2013, b) the Claimant is attempting to gain an allowance and compensation for a position he had not yet reported to, c) an employee is prohibited from causing extra expense to the Carrier in the exercise of seniority.

The Board has thoroughly reviewed the record and finds the Organization has failed to meet its burden. Here, Supervisor Nelson maintains he provided the Claimant with accurate information at the time of his conversation with the Claimant. Although the Organization asserts that Supervisor Nelson knowingly misled the Claimant by providing the Claimant with false information, there was simply no evidence in the record to support this allegation. Unplanned overtime is not an unusual event, and absent probative evidence to the contrary, it is reasonable to assume that Supervisor Nelson was forthright with the Claimant and did not know of the overtime work for January 15, 2013 until after his conversation with the Claimant. As such, the Board must conclude the information supplied to the Claimant at that time was accurate.

The Organization also argued that January 15, 2013 was a regular work day for Gang 8957. The Board can find no evidence to support this assertion. Even when looking at the statement provided by the Claimant, it is apparent the entire Gang did not work that day, thereby lending credibility to the fact that the day was not a regular work day. Unfortunately, timing worked against the Claimant here. Had the Claimant either exercised his seniority earlier rather than working extra, or had the Claimant contacted Supervisor Nelson after he became aware of the work on January 15, 2013, the Claimant would have been successful in displacing into Gang 8957 on or before January 15, 2013. However, because the Board did not find any evidence supporting the allegation that Supervisor Nelson intentionally misled the Claimant, the Board finds the Claimant was provided with accurate information at the time of his inquiry. As such, the Board must deny the claim.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 1st day of March 2019.