

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44078
Docket No. MW-43646
20-3-NRAB-00003-190604**

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

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (Former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier denied Claimant R. Johnson the opportunity to displace to a system flagging foreman position beginning on January 25, 2015 and continuing (System File UP700SN15/1624340 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Johnson must now be allowed compensation for the time he was off work including overtime and per diem.”**

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.

In the instant dispute, the Organization alleges that the Carrier violated the Agreement when it denied the Claimant the opportunity to displace to a system flagging foreman position beginning on January 25, 2015. The Organization alleges the Claimant was provided inaccurate information regarding the reporting location for the displacement.

In summary, the Organization argues a) the Carrier violated the Agreement when it failed to provide the Claimant with proper and accurate information in connection with exercising his displacement rights to the flagging foreman position, b) the Carrier's defenses are disingenuous and without merit, and c) the remedy requested is proper.

In summary, the Carrier argues a) the Claimant was provided with correct information (location and phone number for the contractor) by Supervisor Batey for the flagging position the Claimant wanted to displace to, b) the Organization failed to provide any evidence that the Claimant was provided inaccurate information regarding the displacement location, or that the Claimant actually traveled to the supplied displacement location, c) the Claimant failed to bump the junior employee within twenty calendar days following his displacement pursuant to Rule 2(e), d) although the Claimant failed to bump the junior employee within the initial twenty- calendar day period, the Organization requested and the parties allowed the Claimant an extra day to displace onto the position. On February 8, 2015, the Claimant used the extra day and exercised his right onto the position, and e) the requested remedy is without merit and not supported by the Agreement.

Initially, the Board reviewed the Carrier's assertion that the Claimant failed to bump the junior employee within twenty calendar days following his displacement pursuant to Rule 2(e). In relevant part, Rule 2(e) states:

"Employees entitled to exercise seniority rights over junior regular assigned employees must designate exercise of such rights within twenty (20) calendar days following their displacement..."

The Board disagrees with the Carrier's assertion that the Claimant was outside the twenty-calendar day period pursuant to Rule 2(e). The record indicates the Claimant was displaced on January 5, 2015. Twenty calendar days following Claimant's displacement is January 25, 2015, not January 24, 2015 as the Carrier claims.

As to the other arguments presented by the Organization, the Board finds the Organization failed to meet its burden. Although the Organization alleges the Carrier provided inaccurate information to the Claimant regarding the reporting location concerning his bump to the flagging position, the Carrier maintains the information provided was accurate. Here, the record is void any probative evidence that supports the Organization's assertion that the Carrier supplied inaccurate information to the Claimant. Furthermore, the Organization argues that the Claimant, on January 25, 2015, attempted to contact both Supervisor Batey and the contractor when he was unable to locate anyone at the location where he was to exercise his bump. Although the Claimant provided phone records to the Organization indicating he had called Supervisor Batey on dates prior to January 25, 2015, there was no probative evidence that supported the assertion that the Claimant called either Supervisor Batey or the contractor on January 25, 2015. Based upon all the above, the claim is denied.

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 11th day of August 2020.