

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44295
Docket No. MW- 43587
20-3-NRAB-00003-200439**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Claimant E. Swanson to attend class in seniority order, resulting in Claimant being denied the opportunity of becoming a track inspector/foreman (System File T-D-4605-M/11-15-0241 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Swanson shall now be awarded the earliest possible track inspector/foreman seniority date and allowed the difference in rate of pay between his paid rates and track inspector/foreman rate of pay as well as any overtime that he would have had if assigned to the track inspector/foreman position.”**

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 Claimant has established and holds seniority within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, he was assigned and working a Roster 1, Rank C position.

On October 6, 2014, the Claimant took and passed his Federal Railroad Administration (FRA) Tier I examination/pre-test. The next day, the Claimant contacted the Carrier to confirm his scheduling for the earliest Tier II classes that he could take. The Carrier slotted the Claimant into Tier II classes being held on the week of November 17-21, 2014. Employee K. Cobb was scheduled for Tier II classes being held two weeks earlier than the Claimant's, on November 3-7, 2014. Employee Cobb possessed inferior Roster 1, Rank C seniority vis-à-vis the Claimant. As a result, the Claimant received a Track Inspector seniority date of 11/30/2014 and Employee Cobb received a Track Inspector seniority date of 11/15/2014.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Claimant's superior seniority entitled him to attend FRA Tier II training class. Upon completion of the training course, the Claimant would be permitted to test into the higher Roster 1, Rank A seniority ranks ahead of others who do not hold such qualification and/or seniority, or who hold inferior seniority within the Roster 1, Rank A ranks.

The Organization further contends that Rule 2A of the Agreement makes clear that an employee's relative length of service with the Carrier entitles him, as a matter of right, to preferential consideration for positions. The Organization complains that Employee Cobb was provided preferential access to training, despite his inferior seniority. The Organization contends that the Carrier's decision forevermore puts the Claimant at a disadvantaged position vis-à-vis a junior employee, who will be permanently placed above him on the Rank A seniority list.

The Carrier contends that there is no Agreement rule pertaining to this issue and that Rule 2A does not provide the result that the Organization seeks. The Carrier

contends that it properly placed the Claimant on the waiting list once he gave notice that he had passed the FRA pre-test. The Carrier points out that at that time, Employee Cobb was no longer on the wait list as he had already been assigned to a class roster. Because that class was filled, the Claimant was placed in the next available class.

The Carrier contends that nothing in the contract restricts its right to determine when to close a class and notify attendees so that they may plan and prepare to attend training.

Rule 2A of the parties' Agreement provides,

"RULE 2. SENIORITY RIGHTS AND SUB-DEPARTMENT LIMITS

A. Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided."

In addition, the Carrier provided its policy regarding Tier II training, which reads, in part:

"Engineering Support's Enrollment Process:

Classes are enrolled in seniority order based off a percentage system across all 9 seniority districts, with an average of 2 employees per district, per class. Each employee on the list is evaluated for schedule conflicts, such as vacation and/or concurrent class enrollment for other classes – welding, machines etc.

An employee must be on the wait list as a qualified and eligible employee, having completed FRA Tier I, at the time a class is enrolled in order to be enrolled for that class date. Any employee added to the Tier II wait list will be in queue to be enrolled for the next available class based off of seniority and eligibility.

Each class is enrolled approximately 30 days prior to class start date and employees enrolled will receive both an email and phone call from Engineering Support as notification of enrollment. A note will also be entered in the Employee's work history, notating when the notification call or email and class start date.

Should a senior employee be added to the wait list at any point and time after an employee is added to the wait list, it will affect any employee's ranking who has already been placed on the wait list."

The Organization has not shown in this case that the Carrier's policy violates the parties' collective bargaining agreement or that the policy is arbitrary or unreasonable. At the time that the Claimant completed the FRA Tier I pre-test and was placed on the wait list, Employee Cobb had already been enrolled in a class. In other words, the junior employee was no longer on the wait list. The Policy clearly respects seniority with respect to enrollment in the class from the wait list, but the Claimant had no right to have Cobb removed from a class he had already been enrolled in. When the Claimant was on the wait list, his seniority did not give him superior rights over those already enrolled.

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 23rd day of October 2020.