

PUBLIC LAW BOARD NO. 1838

Award No. 3

Case No. 4

File No. MW-RO-76-3

MW-RO-76-4

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim: (76-3) 1. Carrier violated the effective Agreement when it improperly allowed the displacement of Section Laborers L. A. Twine and J. C. Eaton as of February 10, 1976.

2. Claimants shall now be paid the exact amount of time, at their respective rate of pay that Maxey and Whittaker have consumed or will consume.

(76-4) 1. Carrier violated the effective Agreement by allowing third rate Carpenters J. W. Maxey and M. W. Whittaker to make displacements and to retain their seniority in their respective class, in violation of the provisions of Rule 16.

2. Carrier shall adjust this violation by removing these referred to Carpenters' names from the seniority rosters involved, by request of Carpenter Twine.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

J. W. Maxey, a third rate carpenter, was displaced effective 7:00 a.m. Friday, January 30, 1976. M. W. Whittaker, also a third rate carpenter, was released as such 3:30 p.m., Thursday, January 29, 1976. Monday, February 2, both Messrs. Maxey and Whittaker made inquiry of Terminal Supervisor as to their displacement rights with a view of remaining off work as long as possible under the rules of their Agreement. Mr. Maxey elected to displace Section Laborer M. J. Flint, effective 7:00 a.m., February 9, 1976. Whereupon, Mr. Flint elected to displace Mr. L. A. Twine, the Claimant in Case No. 1 (RO-76-3) effective February 10, 1976. Claimant Whittaker elected to displace Section Laborer J. C. Eaton, effective February 9, 1976.

Rule 16 requires that an exercise of an acquired displacement right be made within ten (10) days of release from a former position under penalty of forfeiture of seniority rights. Mssrs. Maxey and Whittaker, to avoid any technical argument because the tenth in each case occurred on a rest day, had recalled and revised the displacement notices given to Mssrs. Flint and Eaton on Friday, February 6, 1976, to thereafter be made effective on February 6, 1976.

Mssrs. Maxey and Whittaker requested and were granted permission to be off Friday, February 6, and Monday, February 9, 1976.

The Employees contend that Mssrs. Maxey and Whittaker have lost their seniority rights by their failure to actually work on Friday, February 6 and that as a result, Claimant Twine is entitled to be paid for all time lost as the result of Carrier's having permitted J. W. Maxey to displace M. J. Flint and allowing Mr. Flint to displace Mr. Twine. Rule 16 of the current M of W Agreement provides in pertinent part:

(b) When force reductions are made, positions abolished, or displacements occur, employees affected, other than Section Laborers, shall within ten (10) days, exercise their seniority to positions to which their seniority entitles them. Employees other than Section Laborers shall exhaust all seniority rights before being considered furloughed, and failing to do so will forfeit all seniority...."

"...An employee exercising displacement rights under this rule must do so prior to the assigned quitting time of the employee being displaced and will be responsible for protecting the assignment selected on its next regular work day unless otherwise arranged under Rule 26."

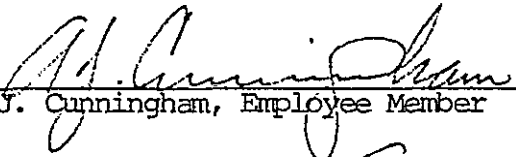
Rule 26 - "Detained from Work" - reads:

"An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. An employee detained from work on account of sickness or other unavoidable cause shall notify his foreman or the proper officer as early as possible."

The Board finds that Mssrs. Maxey and Whittaker acted fully in compliance with Rules 16 and 26 and that when the facts involved in the instant Claims are applied to said Rules, these Claims are found wanting and must be denied. Mssrs. Maxey and Whittaker had timely and properly exercised their displacements and also pursuant to Rule 26, arranged to be excused from protecting their assignments on the next

regular work day. In the circumstances here involved, the Board is constrained to deny these Claims in Cases RO-76-3 and RO-76-4.

Award: Claims denied in Cases RO-76-3 and RO-76-4.

  
A. J. Cunningham, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Atlanta, Georgia, March 30, 1978.