

Joseph Lazar, Referee

CASE NO. 39

STATEMENT
OF CLAIM:

1. The Carrier violated the Agreement when it refused to retain Senior Trackman Mr. G. L. Tucker, instead retained twelve (12) junior trackmen and failed to properly inform Claimant
2. The Carrier will now be required to reimburse Claimant for all wage loss suffered commencing December 7, 1984 and continuing through February 5, 1985 when he was recalled to Tie Gang No. 3.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction over the parties and the subject-matter.

Claimant G. L. Tucker has been an employee of the Carrier since July 27, 1981, and he was employed as a Trackman working at Saginaw, Texas in the vicinity of Fort Worth, Texas. On December 7, 1984, Claimant was cut off in force reduction. Claimant then sought to exercise his displacement rights. In his efforts to do so, according to Claimant, he was informed that there were no employees junior in seniority whom he could displace. The Roadmaster's Clerk states that "I remember speaking with Mr. Tucker in regards to where he could place himself. I advised him that there were no men younger in seniority working under the jurisdiction of Roadmaster Van Matre at that time and for him to contact Mr. R. G. Strong's office for information as to where he could place himself on other territories (Carrier's Ex. No. 7). It is not clear from this record whether Claimant was misinformed or whether Claimant misunderstood what he was told."

At any rate, there is no question about the fact that on December 17, Claimant "was told by Mr. Ernie Wilson to report (to the Childress Track Gang No. 3 at Thorne) on December 17." (Employees' Ex. No. A-5). The record shows that Claimant "did talk to E. A. Wilson on December 17, 1984 and was told that he must place himself that date or it would be too late. He did not report the 17th but instead waited until the morning of the 19th to place himself. Roadmaster on Regional tie gang allowed him to bump into his gang before realizing he had not complied with Rule 13(b). This was brought to his attention because complaints by employees on the gang effect by Mr. Tucker being allowed to displace into the gang. When roadmaster realized his error he then advised Mr. Tucker that due to his not complying with Rule 13(b) he was not going to allow his displacement.

Rule 13(b) provides, in pertinent part: "All displacements must be made within ten (10) calendar days from the date the employe loses his position...". The record is clear that Claimant did not attempt to place his bump on a junior employee in Extra Gagn No. 3 at Childress, Texas until the morning of December 19, 1984, twelve (12) days after Claimant was cut off in force reduction on December 7, 1984, at Saginaw, Texas. (Employees' Exhibits Nos. A-4 and A-11). Under the circumstances, his attempt to displace was not "within ten (10) calendar days from the date the employe loses his position." The record is silent concerning any reason for Claimant waiting from December 17 until December 19 to make displacement.

A W A R D

1. The Carrier is not in violation of the Agreement
2. The claim is denied.

Joseph Lazar
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

C. F. Foose
C. F. FOOSE, EMPLOYEE MEMBER

L. Mares
L. MARES, CARRIER MEMBER

DATED: 12-5-84