

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 32

CASE NO. 41

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO) AND
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Fort Worth
& Denver Railway Company)

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when it refused to retain senior Trackmen Messrs. D. S. McKay, L.D. Johnson, and W.D. DeVoss and instead retained junior trackmen and failed to properly inform Claimants in order for them to place themselves on the position within the prescribed time.
2. The Carrier will now be required to reimburse Claimants for all wage loss suffered commencing January 9, 1985 until Claimants were properly placed on their positions.

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 employee and Carrier within the meaning of the Railway Labor Act, as amended, that the Board has jurisdiction of the subject-matter, and that the parties were given due notice of the hearing held.

Claimants were employed as Trackmen on the Carrier's FWD Seniority District on the Fort Worth Division. They had been employed by the Carrier since July 27, 1981, and carried Seniority Roster numbers 306 (McKay), 307 (Johnson), and 312 (DeVoss). Their place on the Seniority Roster was determined by the order of their birthdate. On January 2, 6, and 9, 1985, Claimants were placed on force reduction from the Clarendon Section. Another Trackman, Mr. R.L. Thorn, with Seniority Roster number 314, but with seniority date also of July 27, 1981, continued to work on the Clarendon Section, running an electro-matic. (Employees' Ex. A-3).

When Claimants were cut off, according to their statements (Employee's Exhibits A-3, A-2, A-4), they contacted the Carrier's Assistant Superintendent of Roadway Maintenance, Mr. E.A. Wilson, to determine where they could place a bump, but were advised that they could not do so anywhere. As stated by Mr. DeVoss, 'Mr. Wilson said, I could not hold anywhere.' (Employee's Ex. 4).

Mr. Wilson, in letter of April 11, 1986, (Carrier's Ex. 6) states:

"At no time did I tell either of the Claimants that they could not hold positions on any gang. I have no record or recollection of any contact from Claimants. If an employee does contact this office, we assist them in finding a junior employee but we do not advise them that they can or cannot place themselves on any position. Instead, they are advised of possible locations of junior employees and are instructed to contact the roadmasters to determine where junior employees are working. This is necessary because our situation report is updated weekly and the roadmaster's is kept daily.

"In summary, I do not give information in this office as to definite locations where employees can place themselves. I do help them as much as possible and then advise them to contact roadmasters where they could possibly hold."

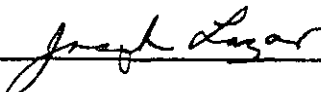
Rule 13(b) provides, in part: "A trackman losing his position account force reduction may exercise seniority over any employee his junior whether assigned to a section or to an extra gang."

Although there is an apparent conflict in the evidence of record, the Board finds that Claimants did in fact contact the office of the Assistant Superintendent of Roadway Maintenance, but that Mr. Wilson did not personally inform the Claimants that they could not hold positions on any gang. It is clear, however, that the Claimants did not receive assistance in finding a junior employee for displacement and were not advised of possible locations of junior employees. If the office of the Assistant Superintendent of Roadway Maintenance had in its possession on January 9, 1985 the situation report which was updated weekly, and if such report showed junior Trackman R.L. Thorn as retained it would be evident that Claimants were not assisted in keeping with Mr. Wilson's statement. The Carrier should determine the facts concerning the situation report. If the situation report shows Trackman Thorn as retained, the claim of Senior Trackman McKay (but not the claim of Johnson or DeVoss) is sustained. If the report does not show this, the claim is denied in its entirety.

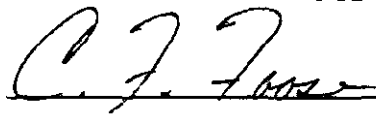
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Claim is disposed of per Findings.

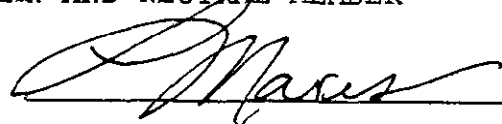
ORDER: Carrier shall implement this award within thirty days of date of this award.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYEE MEMBER



L. MARES, CARRIER MEMBER

DATED: 12/5/86