

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

Carrier violated Rule 12(e) when it failed to allow Carpenter R. E. McGinnis to exercise his seniority to Class "A" Operator on January 2, 1979. He should be granted the said seniority rights on Buffalo Division--South End, effective October 5, 1977.

FINDINGS:

Claimant was off sick from August 25, 1977 until January 2, 1979. In his absence, a Class "A" Operator-Shield Bantan Crane position was advertised on October 5, 1977 and awarded to Carpenter Helper Bortmes on October 18, 1977.

When he returned to duty, claimant attempted to displace Bortmes. Since he had no machine operator seniority, however, his application was rejected. In Petitioner's view, claimant should have been permitted to exercise seniority under Rule 12(e) which reads as follows:

"(e) An employee returning after leave of absence or absence due to sickness may return to his former position or, may, upon return or within ten (10) days thereafter, exercise displacement rights on any position bulletined during his absence. If his former position has been abolished, or if it has been permanently filled by a senior employee, the returning employee may displace any junior employee in his own or lower rank, provided such right is asserted within ten (10) days after his return. An employee furloughed while absent on vacation will have the same displacement rights within ten (10) days after his return."

Under the provision of the rule just quoted, claimant was entitled to exercise his seniority to any carpenter position bulletined during his absence or to his former position. It was not his right, however, to displace incumbents of positions in classifications in which claimant held no seniority. His seniority was in the Bridge and Building Forces classification, not in the Equipment Operator classification.

Rule 12(e) is limited by Rules 2 and 4 which provide as follows:

"Rule 2 Seniority

"(a) Seniority in the class in which employed and in all lower classes begins on the date the employee last entered the service of the Maintenance of Way Department, except that employees who take temporary employment in some other department or outside concern during period of furlough will not break the continuity of their seniority, provided they comply with the requirements of Rule 44.

"(b) Employees who are promoted from a lower to a higher rank in a class will establish seniority in such higher rank as of the date they are awarded bulletined temporary or permanent positions, except an employee awarded a position he has been filling on a temporary basis before or pending bulletin will establish seniority from the date he started to fill the position..."

"Rule 4 Limits of Seniority

"Seniority rights of all employees are confined to the subdepartment in which employed."

Claimant did not have the right to displace a Class "A" Operator and his claim must be denied.

AWARD: Claim denied.

Adopted at Baltimore, Md. *July 13,* 1984.



Harold M. Weston, Chairman



Carrier Member



Employee Member