

PUBLIC LAW BOARD NO. 2960

PARTIES Brotherhood of Maintenance of Way Employees

TO and

DISPUTE Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim filed in behalf of Mr. P. F. Richter, Employee No. 122901. Mr. Maybee, in denying the claim states if Claimant Richter had exercised his option to bump into Zone E, he would have earned the overtime incurred by this gang."

"Claimant Richter must be compensated for six hours overtime at the applicable Trackman's rate of pay for 24 hours overtime at the applicable rate of pay for a 903 machine operator."

FINDINGS: This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

OPINION OF THE BOARD: There are two aspects of the facts that seem undisputed. On August 12, the Claimant contacted the Records Clerk and inquired as to where he could claim a position. He was given a choice of position at St. James, Minnesota, or a section gang at Norma, Wisconsin. Being a man of impeccable judgment, he chose to work in the superior of the states, to wit, Wisconsin. Also undisputed is that on the claim dates, at least one junior employee (O'Flanagan) was working on an extra gang in his home zone.

The claim seeks to compensate the Claimant for overtime earned by the junior employee. It is premised on Rule 12 (b) which requires the Carrier to give an employee assistance in determining where he can exercise his seniority. Evidently the Claimant asserts that if he had known about the position on the extra gang, he would have taken it.

Beyond these undisputed facts, this case could be described as a case of "dueling assertions." The Decision Manager asserted in response to the claim, based on information from the Records Clerk, that the Clerk called the Grievant on August 15 (the first day of the claim) to inform him that he could displace O'Flanagan if he wished. The Claimant, it is also asserted, turned her down preferring instead to remain at Norma. The importance of this is

clear. If true, the Claimant had the opportunity to displace the very person he claims was improperly working ahead of him.

The Claimant's response to this was written on the bottom of the Division Manager's declination. The following comment was hand written by the Claimant: "This is a bunch of bull roar."

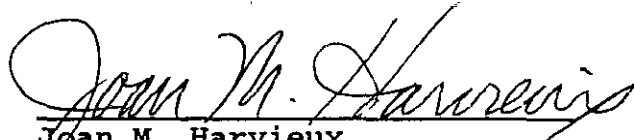
The problem obviously is that there is no basis in the record to resolve this conflict in facts. As such, the claim must be dismissed for lack of proof.

AWARD

The claim is dismissed.



Gil Vernon, Chairman


D. D. Bartholomay
Employee Member
Joan M. Harvieux
Carrier Member

Dated: April 5, 1993