

PUBLIC LAW BOARD NO. 3460

Award No. 36
Case No. 36

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The agreement was violated January 6, 1981, and each day thereafter, when the Carrier failed to recall Sectionman Richard A. Maya to service and instead called a junior Sectionman, and when junior employee was assigned to the sectionman's position at Hysham, Montana, per West Yellowstone Sectionman's Notice No. 3 dated January 29, 1981.
- (2) Claimant Richard A. Maya to be returned to service with seniority rights and privileges unimpaired and paid at his respective rate of pay for all time lost."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that effective January 26, 1980, at the end of the shift, claimant's position was abolished at the Ballentine, Montana, section due to a force reduction. Under the provisions of 8 and 9 of the agreement, claimant had the right either to bump into a position to which his seniority entitled him or to file his name and address in writing on a form supplied by Carrier for purposes of retaining seniority rights to subsequent positions which might open. This latter act had to be accomplished within ten days from the date of the force reduction.

Petitioner's record indicates that claimant chose to file his name and address in accordance with Rule 9, rather than displace to a sectionman's position further from his residence. According to petitioner, since there were no force reduction

notices available at the time (Form 15364), claimant was forced to seek the notice during the week subsequent to the abolishment of his position. Claimant insists that he filed the form by mail on January 2, 1981, and had filled it out in the presence of two other employees. Subsequently, claimant found that a sectionman's position had been bulletined and was filled by a less senior employee who had bid for it and his position as a bidder had not been recognized by Carrier. This triggered the claim herein.

Carrier indicates in its material and in the handling on the property that, in addition to claimant not bumping at the time of his force reduction status, he never filed the appropriate form with Carrier. In fact, the Roadmaster indicated that he had received a telephone call from claimant who had indicated at that time that he had failed to file the form on time and asked for help from the Roadmaster. In the course of that telephone conversation, according to the Roadmaster, the claimant had contacted him and had indicated that he neither exercised seniority rights nor submitted Form 15364. Claimant denies this conversation took place.

This Board's function is to determine whether or not certain actions on the part of the parties resulted in any violation of the schedule agreement. The Board has no way to resolve any dispute with respect to facts upon which a claim is based. In this dispute, there are clearly irreconcilable differences in the factual material submitted by petitioner and Carrier. The Board has no way of determining whether, indeed, claimant in this instance complied with the rules in supplying Carrier with the necessary information. In accordance with long-standing principles in this industry, it is impossible for the Board to evaluate the question of whether there was a violation of the rules based on the dispute in critical facts. Under that circumstance, therefore, this claim must be dismissed.

AWARD

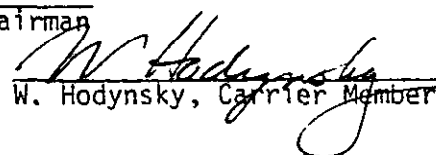
Claim dismissed.



I. M. Lieberman, Neutral-Chairman



F. H. Funk, Employee Member



W. Hodynsky, Carrier Member

St. Paul, Minnesota
March 5, 1986