

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 9

Case No. 8

STATEMENT OF CLAIM

1. The Carrier recalled provisions of the current agreement when it recalled or otherwise allowed Junior Employee Mr. J. D. Whatley to occupy a position prior to recalling a Senior Employee Claimant C. R. Bussey.

2. That Mr. C. R. Bussey be compensated all wage loss suffered as a result of the rule violation as outlined above.

F I N D I N G S

By letter dated October 2, 1986, the Claimant was recalled to service as a Track Laborer commencing October 6, 1986. He reported for such work on October 9, 1986. At approximately the same time, a junior employee was also recalled to work for October 6, but reported and was accepted for work commencing October 1, 1986.

The Organization argues that the Claimant was improperly deprived of work owing to the recall of a junior employee prior

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EMPLOYEE RELATIONS

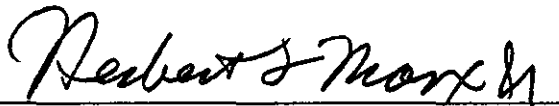
to the Claimant's recall date. The Organization points to Rule 14, which reads in pertinent part as follows:

When forces are increased, or vacancies occur, employees who have been cut off in force reduction or forced to displace in a lower class, shall be recalled to service in the order of their seniority.
(Emphasis added)

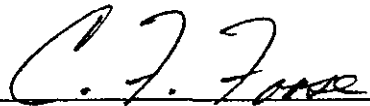
The Carrier was not in compliance with Rule 14 in the recall of the two employees. Claimant is entitled to pay equivalent to time worked by the junior employee from October 1 through October 5, 1986. No pay is due commencing October 6, at which time the Claimant was recalled.

A W A R D

Claim sustained to the extend provided in the Findings. The Carrier is directed to put this award into effect within thirty (30) days of the date of this award.



HERBERT L. MARX, JR., Referee



C. F. Foose, Employee Member



R.J. Schneider, Carrier Member

NEW YORK, NY

DATED: