

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 67

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 29(a) of the Agreement when it willfully misled the Claimant as well as failed and refused to allow him to displace junior employee J. McKenzie from his assigned trackman position on Gang ICCE-T02 on July 31, 2008 (System File S.C082908.0/IC-BMWED-2008-00019).
2. As a consequence of the violation outlined in Part 1 above, Mr. T. Hubbard III ‘... should be allowed one (1) day’s pay at the Trackman’s rate of pay for July 31, 2008 and be allowed a displacement on Gang ICCE-T02.’ (Employees’ Exhibit ‘A-1’).”

FINDINGS:

The Organization filed the instant claim on behalf of Claimant T. Hubbard III, alleging that the Carrier violated the parties’ Agreement by misleading the Claimant and refusing to allow the Claimant, in connection with a reduction in force, to displace a junior employee who was regularly assigned as a trackman on Gang ICCE-T02. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the parties’ Agreement and related seniority provisions, because the Carrier’s defenses are without merit or substance, and because the requested remedy is proper. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the

Claimant was not prevented from exercising his seniority pursuant to Rule 29 of the Agreement, and because no remedy is due the Claimant in that the Agreement was not violated.

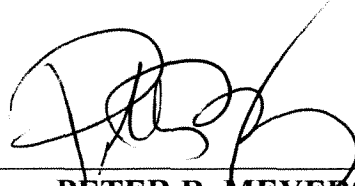
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the agreement when it did not allow the Claimant to displace a junior employee from his trackman position. The record reveals that the Claimant had ten days to exercise his bumping rights and he failed to do it. He did not proceed to McComb, Mississippi, which was the appropriate place to exercise those rights. In fact, the Claimant reported to Hammond, Louisiana, and requested that employee McKenzie be brought to Hammond so that he could displace him there. The Claimant was given directions on how to go to McComb, Mississippi, and instead, on his own, elected to exercise his seniority and bump into another gang in Mays Yard in New Orleans, Louisiana.

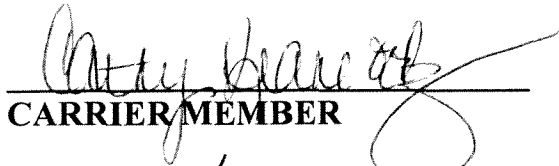
It is fundamental that the Organization has the burden of proof to show that the Claimant had been prevented from exercising his seniority according to Rule 29. In this case, the Organization has failed to show that the Carrier in any way impeded the Claimant in the execution of his seniority rights. It appears from the record that the Claimant did not want to go to McComb, Mississippi, to exercise his seniority and elected to stay in the New Orleans area. There is simply no showing that the Carrier acted in any willful fashion to mislead the Claimant. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: MARCH 31, 2011



ORGANIZATION MEMBER

DATED: MARCH 31, 2011