

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 5

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

1. The Agreement was violated when the Carrier failed to allow Mr. G. Hinkel to exercise his seniority over junior employee D. Beadles working on the Merriam Park Section Crew on January 7, 2008 through February 8, 2008 (System File C-01-08-C060-01/8-00219-150).
2. As a consequence of the violation referred to in Part (1) above, Claimant G. Hinkel shall now be compensated ‘ . . . for two hundred hours at the applicable Laborer’s rate f pay of \$17.56 per hour and for all other benefits to which entitled, when the Carrier improperly denied claimant the opportunity to work as a Laborer on the Merriam Park Section from January 7 through February 8, 2008.’”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it failed to allow the Claimant to exercise his seniority to a Laborer’s position on the Merriam Park Section Crew from January 7 through February 8, 2008, and instead allowed a junior employee to fill this position. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the Agreement when it utilized a junior employee instead of the senior Claimant to fill a short-term laborer vacancy, because the Carrier failed to allow the Claimant a reasonable period of time to respond to Staffing Services and failed to inform the Claimant of what other positions were available to him when he did contact

Staffing Services, because the Carrier's decision to ignore the Claimant's superior seniority and assign a junior employee to the disputed laborer position violated the Agreement and deprived the Claimant of valuable seniority rights and monetary benefits, and because the Carrier's defenses are without merit. 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 failed to make a proper request under Rule 8(c) to be considered for the assignment in question and he therefore lost no work opportunity, because the Organization failed to provide any evidence to support its claim or identify any rule that obligates the Carrier to call the Claimant, and because the requested remedy is excessive and attempts to impose a penalty that is not provided by Agreement.

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 there is insufficient evidence that the Claimant made any proper request to displace, nor did he express any desire to displace, another employee. Rule 8(c) states the following:

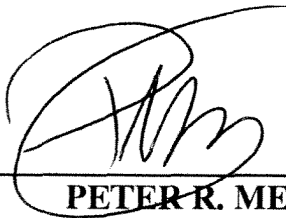
Employees affected by force reduction, who are displaced in the exercise of seniority, if they desire to exercise their seniority, must, unless on leave of absence in accordance with the provisions of Paragraphs (a) and (b) of Rule 17, do so by performing actual work in the position within thirty-five (35) calendar days after being laid off or displaced, otherwise they cannot exercise seniority except as provided for in Rules 8(b) and 8(c). Employees will, when consistent to do so, be notified by the proper officer of the company when other employees have indicated their desire to displace them.

There is no evidence of the Claimant's attempt to contact the Carrier to indicate that he wanted to displace.

It is fundamental that the Organization bears the burden of proof in these types of cases. There is no evidence of any request on the part of the Claimant. The Carrier called and he was not available. Consequently, this Board has no choice but to deny the claim.

AWARD:

The claim is denied.



PETER R. MEYERS

Neutral Member


CARRIER MEMBER

DATED: 9/28/2012


ORGANIZATION MEMBER

DATED: 10/12/12