

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 31

AWARD NO. 31

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (Amtrak, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "(a) Protest of Claimant William Cairns that Robert Love forfeited his Machine Operator and Engineer Work Equipment Seniority when he failed to displace junior Machine Operator T. Reddice, and instead displaced Trackman Zgorzinski.
- (b) Claimant William Cairns shall be compensated for all wage loss suffered due to the Carrier's failure to properly award the disputed E.W.E. position to the Claimant."

On March 30, 1979, the position of Machine Operator occupied by Robert Love was abolished. On April 3, 1979, Mr. Love exercised his seniority to displace a junior employe working as a Trackman.

Later, on either August 9, or August 15, 1979 (the submissions of the parties are in disagreement on the date), the position of Engineer Work Equipment (E.W.E.) "B" Burro Crane was awarded to Mr. Love.

A timely claim on behalf of Claimant William Cairns was initiated by the Organization on August 18, 1979. There is no disagreement that prior to displacing the Trackman, Mr. Love had an earlier E.W.E. seniority date (April 3, 1978) than did Claimant (May 7, 1979). The Organization cites Rule 18 of the effective Agreement as the basis for its claim that Mr. Love forfeited his E.W.E. seniority on April 3, 1979, when he elected to displace a Trackman, rather than junior Machine Operator Reddice.

The pertinent portion of Rule 18 reads as follows:

"REDUCTION IN FORCE - RETAINING RANK ON ROSTER

(a) When force is reduced, employees affected shall have the right, within ten (10) days after the effective date of such reduction, to elect to take furlough or to exercise seniority to displace junior employees in accordance with the following provision of this Rule.

An employee displaced in reduction of force who elects to exercise seniority must exhaust seniority in the class in which employed and successively in lower classes shown on the same seniority roster. An employee who fails to exhaust seniority in any class before exercising seniority in a lower class forfeits seniority in the class in which he fails to exhaust seniority and in all classes of higher rank... ."

The Organization, on behalf of Claimant, argues that when Mr. Love's Machine Operator position was abolished on March 30, 1979, he had two basic options: to take a furlough or to exercise

seniority. He chose to exercise seniority. Under the terms of Rule 18, Mr. Love was required to exercise seniority in the class in which he was employed (Machine Operator) and only after seniority was exhausted in that class could he exercise seniority in a lower class. Mr. Love, however, did not exhaust his seniority in the Machine Operator class and displace Mr. Reddice, but moved to displace a Trackman, which is a lower class. For this reason, Mr. Love forfeited seniority as a Machine Operator, which is the class in which he failed to exhaust seniority, and also forfeited E.W.E. seniority because E.W.E. is a class of higher rank than that of Machine Operator. This being the case, Mr. Love could not properly be awarded the position of E.W.E. "B" Burro Crane. Instead, it should have been awarded to Claimant who was now senior to Mr. Love, qualified, and had properly bid the position.

Based upon the record before us, this Board cannot agree. The abolished Machine Operator position encumbered by Mr. Love was in the Tie Gang. Mr. Love moved to Zone 4 and attempted to exercise his seniority there. However, there was no place for him to bump on the E.W.E./Machine Operator roster in Zone 4. Mr. Reddice was not on that roster and unnamed incumbents of unidentified positions cannot form the basis of a claim. While the Organization is to be commended on the argument it has made in support of the claim, the claim must fail. It is the Claimant's obligation to state the relevant facts and allegations supporting the claim, and this has not been done in this case.

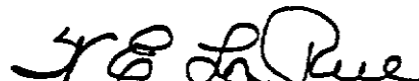
The record shows that Mr. Love made an effort to exercise his E.W.E./Machine Operator seniority. However, on April 2, 1979, he was informed by the New Brunswick Assignment Clerk that there was no one for him to bump at that time, i.e., that there was no one junior to Mr. Love properly awarded a Machine Operator position accruing to those holding seniority on the E.W.E./Machine Operator seniority roster that Mr. Love could bump.

Under the circumstances outlined above, this Board finds that Mr. Love attempted to exercise seniority within his class, but he was informed that he could not do so. It was at that point that he displaced a Trackman. Therefore, since he exhausted the possibility of exercising seniority in the class in which he was then employed before displacing an occupant of a position in a lower class (Trackman), he did not forfeit his seniority for E.W.E./Machine Operator. Accordingly, the claim must be denied.

AWARD: Claim denied.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



R. R. Kasher, Chairman and
Neutral Member

June 4, 1982
Philadelphia, PA