

PUBLIC LAW BOARD NO. 2960

AWARD NO. 85
CASE NO. 105

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it did not allow D. G. Weik to displace a junior employe following his disciplinary disqualification. (Organization File 3T-3680; Carrier File 81-83-101).
- (2) The Claimant D. G. Weik shall now be allowed to displace the junior employe on Job No. 001 at Madison, Illinois and shall be compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. Prior to the date of claim, the Claimant was employed as a Boom Truck Operator on the Carrier's Illinois Division at Benld, Illinois with regularly assigned hours of 7:30 a.m. to 4:00 p.m., Tuesday through Saturday. On December 17, 1982, a formal investigation was conducted to determine the Claimant's responsibility for failing to properly perform his duties and operating

Boom Truck No. 21-4501 in an unsafe manner when he struck and damaged a communication pole line. The Claimant was found responsible as charged, and was assessed discipline of sixty (60) days actual suspension, and was disqualified as a Common Machine Operator. That suspension and disqualification were upheld by this Board in Award 82.

Subsequent to his disqualification, which occurred outside the allowable sixty (60) day probationary period, the Claimant attempted to displace junior employee K. M. Stoudt, who was headquartered at Madison, Illinois. The Carrier took the position that there are no provisions in current schedule rules which afford displacement rights to employees who have been disqualified outside the applicable sixty (60) day qualifying period set forth in Rule 17 of the August 1, 1974 Agreement. The Organization then filed the claim now on appeal before the Board.

The Organization asserts that the Claimant's right to displace outside the 60-day qualifying period is supported by past practice and by Rule 4 which states:

"(c) Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company."

The Carrier acknowledges that the examples of practice cited by the Organization exist but claim that it is inconsistently applied. They also suggest that the Agreement does not allow the right that is asserted by the Claimant. They make reference to the last paragraph of Rule 17, which is, in their opinion, the only rule governing the exercise of seniority upon disqualification, which reads as follows:

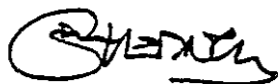
"Employees accepting promotion and failing to qualify within sixty (60) calendar days, may return to their former positions."

They note that this provision permits the employee to return to his former position only. They assert if, as the employees contend, a disqualified employee has full displacement rights, there would be no need for this rule.

It is the opinion of the Board that more weight must be given to the more specific language of Rule 17(a) than to the more general Rule 4 and/or the practice which seems to be, based on the record made on the property, limited in its consistent application to the Illinois Division. Greater weight must be given to 17(a) which clearly implies that if a disqualification occurs outside the 60-day period, an employee cannot displace. The Carrier is correct that if everybody had the right, pursuant to the more general Rule 4, to do what they Union suggests, there would be no need for Rule 17.

AWARD:

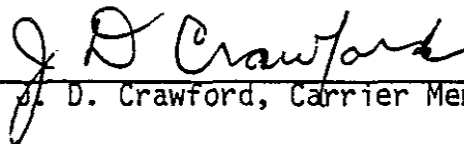
In view of the foregoing, the Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated:

May 8, 1985