

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 10

Case No. 9

STATEMENT OF CLAIM

1. The Carriers decision to remove Mr. M. A. Bullard from the seniority roster was in violation of the current Agreement.

2. The Carrier will now be required to restore claimants name on the proper seniority roster and compensate him for all wage loss suffered, because of the violation referred to above.

F I N D I N G S

This dispute concerns the interpretation of Rule 13 (b) which states in pertinent part as follows:

A trackman losing his position account force reduction, may exercise seniority over any employee his junior whether assigned to a section or to an extra gang.

All displacements must be made within ten (10) calendar days from the date the employee loses his position, . . .

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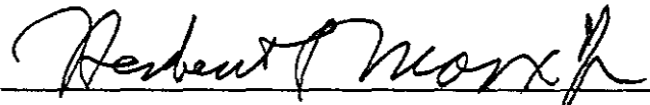
EMPLOYEE RELATIONS

On October 22, 1986 the Claimant was displaced from his unassigned machine position by an employee who had bid on the position. The consequence was that the Claimant had until November 1 to make a displacement. According to the claims handling record, the Claimant was reminded of this requirement on Friday, October 31 (the ninth day) in the Division Office. He allegedly stated he had "already taken care of it", indicating his plan to displace a Surfacing Gang employee. Nothing in the record substantiates that this displacement action was actually taken. On November 4, 1986 -- beyond the 10-day limit prescribed in Rule 13 -- Claimant did attempt to displace on a Machine Operator position. He was then advised that he was beyond the time limit and that he had lost his machine operator seniority rights.

The agreement must be interpreted as written and as clearly agreed to by the parties. In this instance, the Claimant failed to show that he had exercised his machine operator seniority within the specified period. The Board has no authority to vary the applicability of the stated rule. It is also noted that the Claimant was not deprived of seniority rights other than as to a machine operating position. The Carrier correctly followed Rule 13 (b). For a similar finding, see Public Law Board No. 2529, Award No. 30 (Lazar).

A W A R D

Claim denied.



HERBERT L. MARX, JR., Referee



C. F. Foose, Employee Member



R.J. Schneider, Carrier Member

NEW YORK, NY

DATED: