

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 26

Case No. 28

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when it failed or otherwise refused to accept Mr. R. C. Trammell's displacement on January 27, 1989 causing him to lose compensation from January 27, 1989 until he was recalled and returned to service.

2. The Carrier further violated the terms and provisions of the current Agreement when the Carrier's General Manager failed to properly deny the Organization's original claim within the 60 day time limit.

3. The Carrier shall now be required to allow the claim as presented.

F I N D I N G S

This claim concerns the interpretation of Rule 13

(b) which provides in pertinent part as follows:

Exercising Seniority (b): An employee other than a trackman losing his position through force reduction, abolishment of position or displacement must exercise seniority displacement rights by displacing an employee his junior in the class in which loss of position occurred. If there are no employees his junior working in the class, such employee must exercise seniority held in succeeding lower classes until his seniority is exhausted.

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. . . .

While the record is somewhat confusing, it appears that the facts are as follows: the Claimant was notified on January 16, 1989 that he was bumped, as of January 17. The senior employee replacing him commenced work on January 17.

The Claimant reported to a new location in order to exercise his seniority on January 27, 1989. At first, he was not permitted to work because he arrived 15 minutes after the start of the shift and, according to the Foreman, did not have a written bump authorization with him. On further review, however, the Foreman determined that January 27 was in fact the eleventh day following the Claimant's displacement and that the Claimant had lost his entitlement by exceeding the time requirement of Rule 13 (b).

The Board finds the Carrier's conclusion is correct

and that the Claimant failed to exercise his displacement right in a timely manner. On this basis, the claim is without merit.

On a procedural basis, the Organization objected to the form of the General Manager's appeal response. The Board finds that the General Manager's letter was sufficiently explicit so that there can be no doubt that it was a denial of the claim.

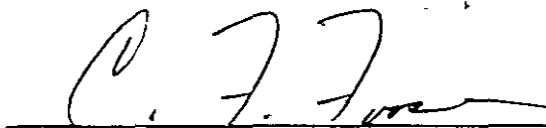
It is noted that the Claimant was recalled to work in seniority order on February 24, 1989 and was dismissed from service on April 6, 1989 (see Award No. 20). This, however, does not prohibit the Organization's processing of this claim as to events occurring prior to the Claimant's dismissal.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



C. F. FOOSE, Employee Member



R. J. SCHNEIDER, Carrier Member

NEW YORK, NY

DATED: