

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 45

Case No. 45

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current agreement when Carrier refused to compensate Mr. C. W. Lewis, Jr. for time worked before displacement and also refused to let Claimant exercise seniority rights by displacing a junior employe on March 6, 1991.

2. The Carrier will now be required to compensate Claimant 8 hours 15 minutes at Group 3 Machine Operator's rate of pay and one day's per diem for March 6, 1991.

FINDINGS

This dispute involves the Claimant's displacement rights under Rule 13, Force Reduction. From the claim handling correspondence, it appears the parties agree that, in the application of Rule 13, employees must exercise displacement rights before the start of the work day, but that employees displaced without notice in advance of a shift are permitted to complete their assignment that day.

The parties present two different scenarios as to what occurred in this instance. According to the Organization, the

Claimant was displaced 35 minutes after starting work on March 6, 1991 but, was not permitted either to work his assignment the remainder of the day or to make a displacement elsewhere for that day.

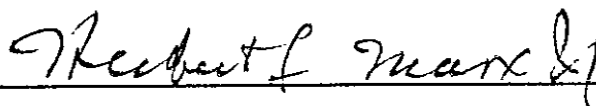
According to the Carrier, a senior employee attempted to displace the Claimant after the start of the work day on March 5 but was advised that he could not do so until the following day. On March 6, the Claimant was notified of the displacement and offered a "bump slip" prior to the commencement of work; instead of immediately exercising a displacement right, the Claimant chose to remain at his assignment for 35 minutes to talk with the Roadmaster. When this conversation occurred, the Claimant was not permitted to continue work for the day and also was advised that he could not displace elsewhere that day because of the understanding as discussed above.

In this situation, the Board is faced with contradictory allegations of fact and has no basis on which to resolve the dispute.

The Organization in its submission alleges that a Carrier response in the claim handling procedure was not in conformance with Rule 27. The Carrier correctly notes that this argument was not raised on the property, and it was thus be inappropriate for the Board to consider it.

A W A R D

Claim dismissed.

A handwritten signature in cursive script, reading "Herbert L. Marx Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: April 26, 1993