

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 45

Carrier File No. 2MWB 89-09-20

Organization File No. B-M-212

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier removed Claimant K. M. Cislo's name from the Welding Subdepartment Head Welder Seniority Roster (Roster 1, Rank A) by letter dated April 5, 1989.

2. The Claimant's seniority as a Rank A Head Welder shall be restored and unimpaired.

F I N D I N G S

The Claimant was notified by the Carrier as follows:

On February 3, 1989 (bulletin closed on January 30, 1989) two Head Welder positions were awarded to junior men on Bulletin No. M-2.

In review of the evidence, you failed to protect your Head Welder date by not placing a bump or bid on next position available to you.

Effective today [April 5, 1989] your Head Welder date of April 13, 1982 has been taken away and will be stricken from the Maintenance of Way Seniority Roster.

The Claimant was displaced from his Head Welder position on December 29, 1988 and was notified of the names of three junior Head Welders whom he could displace. It is undisputed that the Claimant was at this time required to make a displacement or go on furlough. According to the Claimant, he took the proper steps to displace Head Welder position 741-082 at Havre, Montana; the Carrier disputes receiving notice of such displacement.

The Claimant, nevertheless, reported for duty at Havre. There is no denial that at this point he did not displace the stated position but was assigned to another Head Welder position at Havre which was then open. Supervisory concurrence in this placement is obvious.

Despite the dispute as to the original notice of displacement, there is no doubt that the Carrier continued to employ the Claimant in a Head Welder position. There is no convincing reason to contend that he somehow was still required to bid or displace to maintain his Head Welder seniority, in view of the Carrier's role in accepting him in another Head Welder position immediately following his initial displacement.

A W A R D

Claim sustained. The Carrier is directed to place this Award into effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: July 16, 1993