

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 26
NORTHEAST ILLINOIS REGIONAL COMMUTER)
RAILROAD CORPORATION) Award No. 20
_____)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. P. Finn, Carrier Member

Hearing Date: January 7, 2009

STATEMENT OF CLAIM:

- (1) The Carrier violated the Agreement when it failed to afford Claimant J. Carbajal the required one (1) day advance notice of his displacement from his position as required by Rule 9(e) while he was assigned to the Western Avenue Section Crew on February 4, 2005 (System File C-04-05-C060-02-M/08-32-522).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Carbajal shall now be compensated for twenty-three (23) hours pay at his respective time and one-half rate of pay.

FINDINGS:

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On February 4, 2005, Claimant was working an "unassigned" position at Western Avenue. Another employee with greater seniority than Claimant requested to work the position beginning February 5, 2005. The Organization contends that the more senior employee displaced Claimant without giving him the contractually required one workday's notice of displacement.

At issue in this case is the relationship between Agreement Rules 9(e) and 9(f). Rule 9(e) provides:

If a furloughed or displaced employee elects to displace a junior employee, he must notify the appropriate official of the Carrier before the change is made, giving the name of the employee to be displaced and the date he will report. The procedure can, if necessary, be handled by telephone in order that the employee to be displaced can be given as much advanced notice as possible, but not less than one workday. The Carrier will give full cooperation in assisting employees to determine and exercise their displacement rights. All employee notifications shall be confirmed in writing.

Rule 9(f) provides:

Employees temporarily out of the service or serving in lower ranks will be given the opportunity to return to the service or to such higher rank in the service in which they have established seniority, in the order of seniority, to fill temporary vacancies or positions.

The Agreement is ambiguous as to whether when a senior employee seeks to fill a temporary vacancy currently being filled under Rule 9(f) by a junior employee, the senior employee is considered as displacing the junior employee, thereby triggering the notice requirement of Rule 9(e). During handling on the property, Carrier maintained:

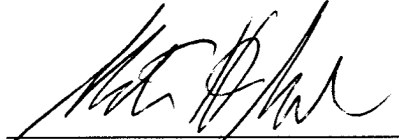
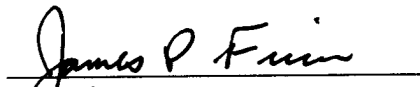
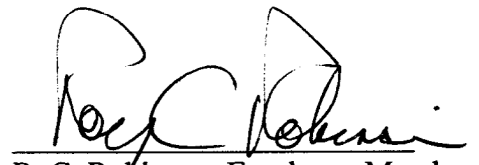
The fact is assignments under paragraph (f) have always been handled separately from displacements under paragraph (e), as reflected in the request submitted by the senior employee on February 4. Employees use the standard "Request To Work An Open Position" form to indicate their desire to exercise their rights under Rule 9(f), but do not indicate on the form that they intend to displace another employee.

The process under Rule 9(f) stands in direct contrast to the displacement process under Rule 9(e) in which employees utilize the standard "Bump Notice" to advise that they will be displacing a specific employee on a specific date. The displacement process is not used by employees in filling position under Rule 9(f).

Carrier's representations were not denied on the property and we accept them as the standard practice on the property. In light of the ambiguity concerning the relationship between Rules 9(e) and (f), we accept the established practice as indicating the intent behind the Rules. Accordingly, we hold that Claimant was not entitled to the Rule 9(f) one workday notice.

AWARD

Claim denied.


Martin H. Malin, Chairman
J. P. Finn
Carrier Member
R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, April 28, 2009