

PUBLIC LAW BOARD NO. 5696

AWARD NO. 17

CASE NO. 17

BURLINGTON NORTHERN RAILROAD

PARTIES

TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The removal of Mr. T. W. Scott's seniority date from the roster and the Carrier's notification to Mr. Scott that he was no longer an employee because he had not complied with the Agreement and displaced a junior employee in order to protect his seniority standing as instructed was unjust.
- (2) As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be reinstated and he shall be compensated for all wages lost.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a second class Carpenter with a service date of

February 28, 1994 who was working on Gang 827 in Tulsa in February, 1995 when that Gang was abolished. This claim contests his removal from the B&B seniority roster on March 10, 1995 for failing to protect his seniority as required by Rule 12 of the Agreement, which states, in pertinent part:

(a) An employee displaced in force reduction from a regular assignment will be permitted, in accordance with the following, to displace any junior employee from a regular assignment, provided he has sufficient applicable seniority.

(1) He will advise his superior officer in writing, with copy to the General Chairman, within seven calendar days of his displacement where he desires to place himself.

The April 3, 1995 investigation reveals that Claimant was off sick from February 14 through 20, 1995, during which time an Abolishment Notice was issued indicating that his gang would be abolished at the close of the second shift on February 27, 1995. Claimant received this Notice from Trainmaster Martin when he returned to work on February 21, 1995 along with two disciplinary letters imposing 5 and 10 day suspensions. Martin testified that he told Claimant that he had seven days from the date of the abolishment to call Joy Mendez at the bid office in Denver, and that he could talk to Boyd, his foreman, who was in the same position.

Claimant testified that Martin may have explained the requirements of protecting his position, but he was confused and did not recall anything about a time constraint. Claimant called his supervisor, Steven Talbot, on February 21, 1995 and was told to contact Joy at the Denver field office and place his bump according to her instructions to protect his seniority;

the seven day requirement was not mentioned. Claimant and Talbot also discussed the discipline. Claimant recalled Talbot saying that he should take the discipline, and then when he came back there would be temporary positions in the Tulsa yard for him and he could do his bidding and bumping then. Talbot indicated that he may have told Claimant he could work a vacancy until the time he needs to place a bump, but that he never told him not to worry about his job.

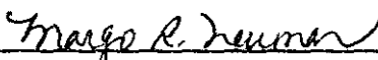
Claimant was off work serving his suspensions consecutively between February 21 and March 20, 1995, during which time he did not contact the Denver field office to place a bid or protect his position. He testified that he intended to do so after he returned to work from the suspensions. Upon his return from vacation on March 10, 1995, Talbot discovered that Claimant had not placed a bid, and issued him a letter advising him of his failure to protect his position under the Agreement and his removal from the seniority roster. Apparently there was some problem serving him a copy of the letter, so Claimant was notified when he returned to work on March 20, 1995. Claimant testified that he never received or requested a copy of the Agreement, and understood that the only book containing rules was the Operating Rule book.

After full consideration of all of the facts in this case, this Board is of the opinion that there is substantial evidence in the record to support the Carrier's action in removing Claimant from the seniority roster on March 10, 1995. Claimant was told at least twice by his superiors that he was required to contact the Denver field office to protect his position. Further, Trainmaster Martin specifically mentioned the seven day time requirement when informing Claimant that his gang was being abolished on February 27, 1995. If Claimant was confused as to what he had to do to

protect his position, he clearly understood that he was obligated to contact the Denver field office, and that the procedure would be explained to him by Joy Mendez. His failure to do so in a timely fashion was a violation of Rule 12, the unfortunate consequence of which is the loss of his seniority. The fact that Claimant was serving a disciplinary suspension during the critical time period is insufficient to excuse him from his contractual obligations. In the absence of a showing that Claimant was prevented from fulfilling his responsibility to place a bid, we must deny his claim.

AWARD:

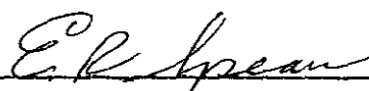
The claim is denied.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
January 22, 1997