

PUBLIC LAW BOARD NO. 7660
CASE NO. 10

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s treatment of Claimant J. Griffin on or about January 26, 2013 when he was displaced from his assigned anchor applicator position on Gang 8513 and continuing thereafter was unjust and constituted a violation of the Agreement (System File T-1348U-701/1586615 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant Griffin shall ‘...be compensated for all lost wages and per diem from January 26, 2013 until the end of the work cycle. We further request that any additional expenses incurred by the Claimant for unnecessary travel expenses, as a result of the unjust treatment, be fully reimbursed.”

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 displaced from his anchor operator position on Gang 8513 on January 25, 2013, and requested to be held on the gang through the end of the work cycle.

He was told by his supervisor that he could work that day, and that he would take a head count and see if there was another available position for him to occupy later in the day. Claimant chose not to work, but to return to the motel to check into his displacement opportunities. When Claimant expressed his desire to displace a heater car operator on the gang the following day, he was informed by his supervisor that he had to know how to operate the heater car that day, and if he did not, he could be disqualified. Claimant chose not to exercise displacement on Gang 8513, but went elsewhere. Claimant, through the Organization, requested an unjust treatment hearing, which was held on April 23, 2013.

This claim protests Carrier's refusal to allow Claimant to continue working with the gang through the end of the work cycle, on the basis that Claimant was treated differently due to his race, since other white gang members were held over after displacement. The Organization contends that Carrier also violated the Agreement by refusing Claimant adequate time to train or qualify on the heater car position, and that the statements submitted by Carrier on the property were self-serving attempts to justify improper actions. It seeks compensation for Claimant's lost wages and benefits until the end of that work cycle, as well as other associated losses occasioned by his having to travel elsewhere to displace onto another gang.

Carrier argues that there was no violation of Rule 48(n) since Claimant was afforded the requested unfair treatment hearing on April 23, 2013. It asserts that there is no right under the Agreement that would allow Claimant to demand to be held on a gang after displacement, and no actual proof that others were or what those circumstances might have been. Carrier contends that this is not the appropriate forum for a claim of alleged disparate treatment due to race, or other protected category by EEO Policy, since the EEO/AA Department has a procedure for investigating such complaints. It maintains that the Organization did not meet its burden of proof, since there is no evidence junior employees were permitted to work instead of the Claimant or that he was treated

unfairly, and there was no rebuttal offered to the statements of supervisors and employee witnesses confirming that Claimant was offered the opportunity to work extra on January 25, 2013 but declined to do so, in favor of finding a position into which he could displace.

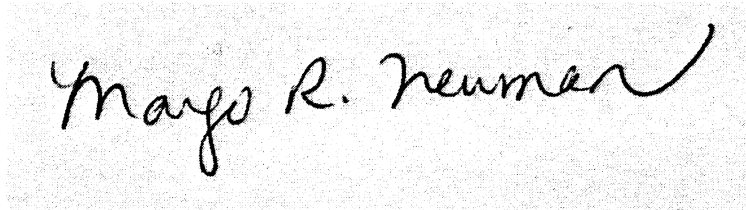
A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving that Carrier violated the Agreement in its treatment of Claimant in conjunction with his displacement from Gang 8513 on January 25, 2013. While the underlying basis for the claim is that Claimant was disparately treated, allegedly due to his race, when he was not permitted to hold over through the end of the gang's work cycle after he had been displaced, there is no evidence that Claimant has an Agreement right to be held over after a displacement, or that other employees were permitted to do so when the gang was similarly staffed or in comparable circumstances. The evidence substantiates that the supervisor told Claimant that he could be held over for that day, and he would evaluate the gang's head count and opportunities that Claimant was qualified for later in the day, but that Claimant chose not to work but to explore his displacement options.

Additionally, informing Claimant that he needed to be qualified without requiring training on the heater car operator position to displace the gang's operator, and could be disqualified if he was not, is not an inaccurate statement in line with the provisions of Rule 21(e) that permit an employee to displace a junior employee in a position "in which seniority and qualifications are held." As noted by Carrier, the opportunity for a training period is provided when an employee bids on, and is awarded a position, but not in the circumstances of a displacement. Whether the allegation of racially motivated treatment or prohibited discrimination is best left to Carrier's EEO procedures, rather than the Rule 49 claim process, need not be addressed in this case, as the Organization was unable to present any proof of improperly motivated or impermissible action taken against

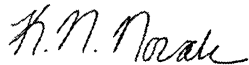
Claimant by his supervisor. Since Claimant's right to an unjust treatment hearing was granted by Carrier, the claim must be denied.

AWARD:

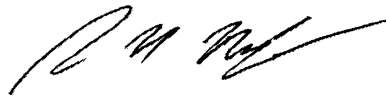
The claim is denied.

A handwritten signature in black ink that reads "Margo R. Newman". The signature is written in a cursive style with a large, sweeping flourish at the end.

Margo R. Newman
Neutral Chairperson

A handwritten signature in black ink that reads "K. N. Novak". The signature is written in a cursive style with a large, sweeping flourish at the end.

K. N. Novak
Carrier Member

A handwritten signature in black ink that reads "Andrew Mulford". The signature is written in a cursive style with a large, sweeping flourish at the end.

Andrew Mulford
Employee Member

Dated: 09/01/2015

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