

PUBLIC LAW BOARD NO. 7099

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES, DIVISION OF I.B.T.**

CASE No. 13

-And-

**UNION PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM:

The Claim, as described by the Petitioner, reads as follows:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to provide adequate and appropriate information to Mr. D. King in regard to reporting to his assignment on Gang 8574 on January 20, 2003 (System File J-0321-53/1357463).
- (2) As a consequence of the violation referenced to in Part (1) above, Claimant D. King shall now *** be allowed compensation at his respective rate of pay for sixteen hours of pay on January 20 and 21, 2003, one hundred and four dollars (\$104.00) per diem allowance and be paid thirty six cents (0.36) for each of the 2902 miles he was required to drive.

The Carrier has declined this claim.”

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

AWARD

After thoroughly reviewing and considering the record of this case together with the parties' presentation, the Board finds that the claim should be disposed of as follows:

AWARD

The Claimant established and holds seniority in Group 26 of the Track Subdepartment. Immediately prior to the dates associated with this dispute, the Claimant was assigned and

working on Gang 5042 under the supervision of Manager of Track Maintenance M. Larsen at Luck, Wyoming.

On January 9, 2003, the Claimant was awarded a position on Gang 8574 located in Bakersfield, California and was to report to that assignment on January 12, 2003. As a result of the Carrier's decision to hold the Claimant over on his former assignment until January 16, 2003, the Claimant contacted Supervisor Largent on January 10, 2003 to advise him of the holdover. Claimant left a message to this effect, and Supervisor Largent returned his call, advising the Claimant to report to Gang 8574 as soon as he was released from his position on Gang 5042 on January 16, 2003.

On January 12, 2003, while the Claimant was working on Gang 5042 in Lusk, Wyoming, a senior system employee displaced his newly assigned position on System Gang 8574.

The Claimant was released from his position on Gang 5042 on January 16, 2003. The Claimant maintains that he attempted to contact Supervisor Largent on January 16, 2003 to inquire if he should report to the assignment on Gang 8574 or if he was bumped from this assignment, but asserts that his call was not returned. In his statement to the Organization in support of his claim, the Claimant stated in relevant part:

[I] called Greg Largent, left a voice mail that stated that I had been released wondered if I had been bumped and I was leaving Central City and left my home phone #. This was on Saturday January 18th when I finally got thru to voicemail about 11:00 am. I tried January 16th to call Greg Largent on his pager and also on January 17th & 18th. All I got was I could not use that # in my area. The # was 1-800-877-1810; pager # 272-3825.

In addressing the calls the Claimant allegedly made to the Carrier, Claimant maintains as follows:

I don't have phone bills because my calls were made from the Lusk, Wy. Depot or pay phones. I have no statements from others because I have traveled by myself. I called

Mike Larsen (MTM) at Lusk Thursday as I was traveling back home. That is the only place I could go after being bumped. I took a vacation day Friday January 24th and reported to Lusk January 27th.

The Carrier maintained that the Claimant did not take a vacation day on January 24th. The Carrier's statement to this effect went undisputed.

The Claimant drove approximately 1,451 miles from his home to Gang 8574's work location at Bakersfield, California, reported for duty on January 20, 2003, and was thereupon advised that he had been displaced on January 12, 2003. The Claimant then made the trip back to Lusk, Wyoming where, on January 24, 2003. The Claimant then contacted former Supervisor Larsen on January 26, 2003, and was returned to a position on Gang 5042 on January 27, 2003.

Through his grievance, the Claimant seeks sixteen (16) hours at his straight time rate for lost work opportunities, a per diem rate of \$104 and mileage reimbursement at the rate of \$0.36 per mile. In support of his claim, the Claimant maintains that had he been provided with appropriate and adequate information about his displacement, his trip to Bakersfield, California and his lost work opportunities on January 20 and 21, 2003 could have been avoided. The Carrier denies this claim, and maintains that there is no support in the Agreement for the remedy sought by the Claimant. In addition, the Carrier maintains that the Claimant, whose actions in contacting his Supervisor about whether he was to report to gang 8574 or whether he had been bumped from this assignment should have properly been made to NPS.

Following our careful review of the record, and for the reasons that follow, the Board concludes that this claim must be denied.

First, we find nothing in the Agreement which requires the Carrier to contact or compensate held over employees who are then displaced from their newly assigned position.

Second, it is clear that Rule 21 requires employees to contact NPS for displacement information. In this regard, Rule 21 states in relevant part:

Identification of the position to which the displaced employee intends to exercise displacement rights must also be given by phone to the appropriate company representative in Non-Op Personnel Services.

It is undisputed that NPS is available Monday through Friday to provide such information, and that the Claimant did not attempt to contact NPS. During the on-property handling of this case, it was evident that the Claimant was keenly aware of his obligation to contact NPS having done so in the past. In this regard, the Claimant was provided the following inquiry in a questionnaire given to him by the Organization in which they informed him as follows:

. . . the record does not reveal why you did not attempt to contact the NPS center asking him why he did not contact NPS. We have reviewed your personal records and they show that you did contact NPS center earlier in the month of January 2003 but you did not contact them for information in connection with the fact that you may have been displaced from the Concrete Tie Gang.

Please advise why you did not contact the NPS center and instead contacted supervisor Largent for information pertaining to your ability to work on the Concrete Tie Gang between January 10 and January 20, 2003. If you do not provide an adequate response to this issue before February 2, 2004, we will not have sufficient information to progress this claim and will be forced to close our files on this issue.

While the Claimant responded by noting that he elected to call Supervisor Largent for updated gang information, his response to the Organization's inquiry reflects that his call was to inquire whether he had been "bumped". Clearly, displacement information of the type sought by the Claimant is properly obtained from NPS. Accordingly, the Board can find no reason in the record as to why the Claimant did not contact NPS between January 12 and January 20, but waited until the weekend when NPS is closed.

Next, as to the Claimant's alleged lost work opportunities, the record reflects that while the Claimant had the ability to displace on January 24, 2003, he did not make a displacement until

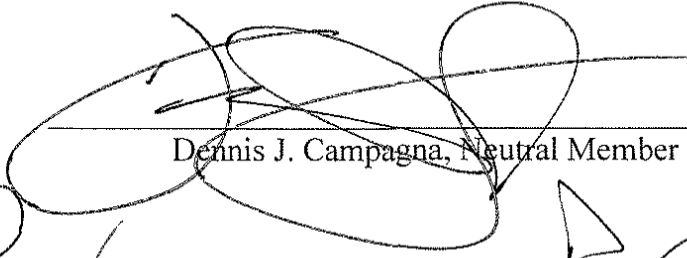
January 27, 2003. Assuming, arguendo, that the Claimant had a valid claim for lost work opportunities, it is incumbent upon him to demonstrate that he was willing ready and able to work on those dates put at issue. We find on the basis of the record before us that the Claimant was not willing, ready and able to work from January 24th to and including January 26th.

Finally, we have reviewed the cases supplied by the Organization in its processing of this claim and find that they do not change our conclusion. Simply summarized, the instant matter is not one where the Carrier or its agents negligently or maliciously misled the Claimant, but rather a situation where the Claimant was concerned over the possibility that he may have been displaced, knew the proper procedure for securing the answer to his concern, but failed to follow such procedure.

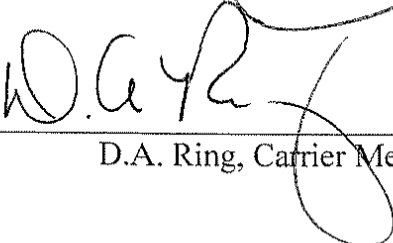
Given the foregoing, we find no violation of the Agreement has occurred.

AWARD

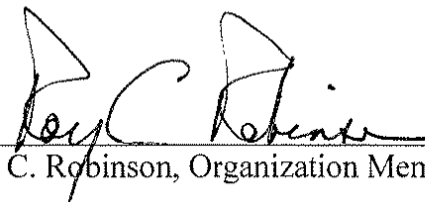
Claim denied.



Dennis J. Campagna, Neutral Member



D.A. Ring, Carrier Member



R. C. Robinson, Organization Member

Dated: October 31, 2008

Buffalo, New York