

**BEFORE
PUBLIC BOARD No. 7100**

**Award No. 15
Case No. 15**

BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYEES)	
	)
	)
vs.)	PARTIES TO
	) DISPUTE
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

Appeal by the Organization on behalf of N. Gay, a System Tie and Rail Inspector ("STRI"), regarding the Carrier's refusal to allow Gay to exercise his seniority over junior employee D. Kruse, and to replace D. Kruse in Gang 8952 beginning on May 3, 2004¹ and continuing thereafter. The Organization asks for Gay to be assigned to Gang 8952 as a STRI and for him to be compensated for all hours (straight time and overtime) worked by junior employee D. Kruse beginning May 3, until the Claim is resolved.

FINDINGS:

The following facts are undisputed: Claimant has a service seniority date of June 4, 1970. Claimant had a seniority in the Track Subdepartment Group 6 as a STRI date August 16, 1991. Claimant acquired his seniority on the SRTI as part of an agreement reached between Carrier and the Organization. However, Claimant never worked as a STRI or received any training provided to SRTI employees. From 1992 until April 23, when the position was abolished, Claimant worked as a Flange Oiler Maintainer in the

¹ All dates hereinafter refer to the year 2004 unless otherwise specified.

Track Subdepartment Group 3. On May 3, Claimant reported for duty to Gang 8952. seeking to exercise his seniority rights to “bump” junior employee D. Kruse from his SRTI position.

By letter dated May 3, sent by Darrell Neuner, Manager of Track Programs, to Gay, Carrier informed Claimant the following:

Dear Sir:

This letter is to advise you that you are hereby disqualified as a System Tie/Rail Inspector for the following reasons:

On May 3, 2004, while attempting to place yourself on Gang 8952, Track Supervisor Brent Starr asked you if you could use the GPS Tie Marking System and you replied “No”. Also you were asked to access information from the computer to down load ‘Tie Spot’ information which you were unable to perform, which is crucial information for the duties of a Tie/Rail Inspector. At this time you were not allowed to bump the qualified Tie/Rail inspector. Since you have demonstrated your inability to perform the duties that are essential:

I have no choice than to advise you the effective this day, you are disqualified as a System Tie/Rail Inspector, and you must exercise your seniority as allowed.

Darrell Neuner
Manager Track Programs²

By letter dated May 24, addressed to Bull Huber, the Director of Track Programs, Claimant requested Carrier to train him on the computer programs associated with the STRI position.³ Carrier denied the request, no formal training on the use of the GPS or the new technology associated with the STRI position was offered to employees holding

² The Organization’s Submission Exhibit No. A-1

³ The Organization’s Submission Exhibit No. A-5

STRI seniority. Rather, Carrier trained the employees who were working as STRI.

The Organization argues Carrier violated Rule 1, 9, 15, 17, 18, 19 21 and 22 of the July 1, 2001 Agreement, when it failed or refused to allow Claimant to replace junior Kruse for the STRI position.

RULE 1- SCOPE OF THE AGREEMENT

This Agreement will govern the wages and working conditions of employees in the Maintenance of Way and Structures Department listed in Rule 4 represented by the Brotherhood of Maintenance of Way Employees Organization.

RULE 9- TRACK SUBDEPARTMENT

Construction and maintenance of roadway and track, such as rail laying, tie renewals, ballasting, surfacing and lining track, fabrication of track panels, maintaining and renewing frogs, switches, railroad crossing, etc., repairing existing right of way fences. Construction of new fences up to one continuous mile, ordinary "individual repair or replacement of signs, mowing and cleaning right of way, loading, unloading and handling of track material and other work incidental hereto will be performed by forces in the Track Subdepartment.

- (a) **SYSTEM TIE AND RAIL INSPECTOR-** Inspection of rail, ties, and track structure in connection with major program renewals and replacements.

RULE 15- ESTABLISHMENT OF SENIORITY-WHEN ESTABLISHED

- (a) Seniority of new employees hired in a particular class begins with the date their pay starts.
- (b) Seniority of employees accepting assignment in another class in which seniority is not already held will begin with the date assigned by bulletin. Ranking of employees promoted and assigned by bulletin on the same date will be determined in the following sequential order:

- (1) Seniority in the group involved; or
 - (2) Seniority in the subdepartment involved; or
 - (3) Seniority in the Maintenance of Way Department;
or
 - (4) Relative of the employees involved by ranking the
the oldest employee senior.
- (c) Except as provided in Rules 10(b) and 19(e), employees promoted to a position who are disqualified thereon within thirty (30) working days will not acquire a seniority date as a result thereof. Employees who fail to qualify for the same assignment (e.g. Speed Swing Operator, etc.) on two (2) occasions within a period of one (1) year, will not be allowed to make application to qualify thereon again for a period of one (1) year from the date of their second failure. In "any case, after receiving notice of failure to qualify, employees will vacate the position on which disqualified and return to their former position provided it has not been acquired by a senior employee or abolished, in which event the disqualified employees may exercise seniority pursuant to Rule 21. Prompt written notice of the disqualification will be issued to the employee involved.

RULE 17- SENIORITY ROSTERS

- (a) Seniority rosters will be revised as of January 1 each year. Each employee retaining seniority on any Maintenance of Way seniority roster(s) as of January 1st will be advised, in writing on or before January 10th of the seniority date(s) retained on the respective seniority roster(s). In addition, a complete set of rosters reflecting additions and deletions for the previous year and a complete set of rosters reflecting all entries as of January 1st will be furnished to the General Chairman, System officers, local chairmen and local supervision on or before January 10th.

RULE 18- EXERCISE OF SENIORITY

- (a) Except as otherwise provided in this Agreement, seniority

rights of employees may be exercised only to vacancies or new positions in their seniority classes and districts or in reduction in force in accordance with Rule 21.

RULE 19- PROMOTION

- (a) Promotion will be based on ability, qualifications and capacity for greater responsibility and where these requirements are sufficient, seniority will prevail.

RULE 21- REDUCTION IN FORCE

- (e) When forces are reduced or positions abolished, seniority will govern, and employees affected thereby may displace junior employees in any seniority class in which seniority and qualifications are held. Employees must exercise seniority within fifteen (15) days from the date of the displacement unless extension of time is agreed to by the designated Carrier Officer and the General Chairman. 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.

- (h) Displaced employees will not be allowed to exercise seniority to fill positions for which they have not established qualifications previously.

RULE 22- RETENTION OF SENIORITY

- (a) Unless otherwise agreed to by the designated Carrier Officer and the General Chairman, an employee who applies for and

accepts a bulletined assignment in another class to establish seniority or qualifications will remain in the assignment involvement for a period of not less than thirty (30) working days except in those instances where the employee is disqualified; recalled to a higher class; or the position is abolished or acquired by a senior employee in the exercise of displacement rights in which event the employee may exercise seniority pursuant to Rule 21. Bids will not be accepted from employees who are working in a lower classification pursuant to Rule 22(a) until the thirty (30) working days period has expired.

The Organization asserts pursuant to Rule 19(a) of the Agreement Carrier found Claimant has "ability, qualifications and capacity" when it granted his seniority in the STRI position back to August 16, 1991. Further, the Organization argues pursuant to Rule 15(c) Carrier failed to disqualify him with thirty (30) days of his August 16, 1991. Therefore, according to the Organization, Claimant has clearly demonstrated his ability and qualifications since 1991. In addition, the Organization argues Claimant was fully qualified for the position until Carrier implemented the GPS system and the new technology which Claimant is unable to use. It claims Carrier had two (2) years to train all employees holding seniority in the STRI position on how to use the computer Tie Spot Repository and the functions of the GPS system. The Organization also asserts Carrier continued to deny Claimant the opportunity to train and to acquire the skills in question even after Claimant requested training by letter dated May 24. In these circumstances, it contends, Carrier cannot deprive a fully qualified employee from exercising his seniority rights.

The Organization asserts Rule 21(e) protects Claimant's rights, as a senior employee, to replace D. Kruse. Rule 21(e) provides when positions are abolished "seniority will govern, and employees affected thereby may displace junior employees in any seniority class in which seniority and qualifications are held."

Carrier, on the other hand, argues Rules 19, 20 and 21 of the Agreement all required an employee to be qualified to perform the duties of the position prior to displacing a junior employee for a position. Carrier asserts the ability to use the GPS system and other computer applications are essential skills required for the STRI position. It also argues it is uncontested Claimant never worked as a STRI and is not able to use the GPS and other computer applications required to do the job. According to Carrier, Claimant was not given the training opportunity to learn the GPS system, the Tie Spot Repository or other computer applications because he never worked on the STRI position. The training was offered to employees who were assigned and worked as STRI. If Claimant had worked in the position, he would have been given the opportunity the training opportunity in accordance with Rule 22(a) of the Agreement. Essentially, Carrier contends, it determined Claimant did not possess the required skills to qualify for the STRI position because he was unable to use the GPS system and other computer programs. For all the foregoing reasons, Carrier asks the Board to dismiss the claim in its entirety.

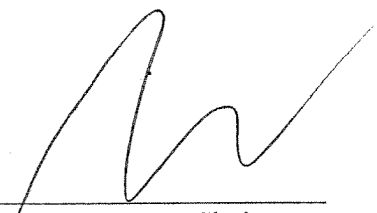
After reviewing the record facts, the Board finds the grievance must be denied. Essentially, the Organization asserts Rule 21(e) protects the rights of a senior employee during a work force reduction and when a position is abolished and it is undisputed

Claimant is senior to Kruse. The clear and unambiguous language of Rule 21(e) provides “when forces are reduced and positions are abolished, seniority will govern, and employees affected may displace junior employees in any seniority class in which *seniority and qualifications are held.*” It is uncontested Claimant was unable to use the GPS system and other computer applications required for the STRI position. Similarly, it is undisputed he never worked as a STRI and thus, was never trained to use the GPS system and computer programs when it was offered to the employees who worked as STRI. The Board finds the record evidence is sufficient for Carrier to have decided Claimant was not qualified for the STRI position. Further, in this case, a review of the record does not support the conclusion Carrier was contractually required to provide Claimant with the training in question in order for him qualify for the position.

Accordingly, the Claim is denied.

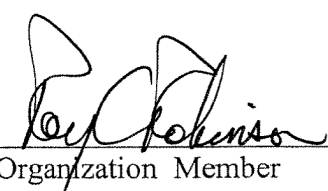
AWARD

Claim denied.



Martin F. Scheinman, Esq. Chairman
Neutral Member

Carrier Member

Dated: March 4, 2009

Organization Member