

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 187

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:"Claim of the System Committee of the Brotherhood that:

1. The dismissal (forfeiture of seniority) imposed upon Employee Adrian Black in connection with his failure to make a timely displacement in accordance with Rule 14 of the Agreement is unjust, unwarranted and in violation of the Agreement (Carrier's File CW-MW-1-58-2 (Black).
2. As a consequence of the violation referred to in Part I above, seniority forfeiture letter shall be rescinded and Mr. Black shall be allowed to make a displacement and be made whole for all time lost since March 16, 2009

Upon the whole record and all the evidence, after hearing, the Board finds 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.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:


The Claimant has a seniority date as a Track Broom Machine Operator on the S-11 Gang of February 25, 2009. The Claimant was displaced in his position as a Machine Operator by J.L. Maynard on March 6, 2009, who has a seniority date as an Eastern Region Machine Operator of September 4, 2005. Under Rule 14(b) which governs force reductions and the use of displacement, the Claimant has ten calendar days to exercise displacement rights over a more junior employee from the date of the original displacement notification. The Carrier notified the Claimant on March 25, 2009 that the failure to exercise displacement by March 16, 2009 had resulted in forfeiture of seniority.


There is no dispute that the Claimant was aware of rule 14(b). He has made displacements in the past. There is no dispute that the Claimant failed to exercise


displacement privileges by March 16, 2009. The Organization on behalf of the Claimant has argued (1) that the Claimant delayed making a displacement claim due to the impression that the original displacement was improper and (2) that the Claimant made an attempt of displacement notification by contacting Supervisor Gibson, who did not follow up on the conversation.

The Board finds that there is insufficient evidence to suggest that the displacement of the Claimant was improper nor is was any direct evidence presented that he was given this impression. The Board also finds that while the Claimant may have had a conversation with a Supervisor regarding displacement, including a phone call to Supervisor Gibson on March 13, 2009, rule 14(b) requires that the employee make a notification to the junior employee prior to quitting time of the employee being displaced. There was no attempt by the Claimant on March 16, 2009 to follow up on and pursue the matter. There was only a conversation with a Supervisor during a time in which the unit was not working which did not fulfill the requirement of rule 14(b) to make a displacement in this case.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member July 22, 2010


D.L. Kerby
Carrier Member 7/22/10

Issued at Chicago, Illinois on June 19, 2010.