

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 204

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The dismissal (seniority termination) of Laborer D. A. Vass for violation of Rule 14(b) of the Agreement in connection with his alleged failure to exercise his seniority following his displacement as laborer on TS-31 is unjust, unwarranted, based on unproven charges and in violation of the Agreement [Carrier's File CW-MW-1-58-2 (VASS)].
2. As a consequence of the violation referred to in Part 1 above, we are requesting that the seniority forfeiture letter of October 14, 2009 be rescinded and the Claimant be allowed to make any displacement that may be available."

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 entered service for the Carrier on August 18, 2008 in the position of Track Laborer and later established seniority as a Machine Operator and a Trackman. On September 25, 2009 the Claimant was displaced from his position as a Laborer on the Carrier's TS-31 Timber and Surfacing Gang by a more senior employee. Under Rule 14(b), when an employee is displaced or their job is abolished, they have ten days from the date of the event to either displace a more junior employee or to fill a vacancy. If an employee fails to exhaust these options, they forfeit all seniority. The Claimant did not formally displace any junior employee or fill a vacancy under 14(b) for the ten days following his September 25, 2009 replacement. The Carrier notified the Claimant on


October 14, 2009 that, because he failed to exercise his seniority and exhaust all his options under Rule 14(b), he had forfeited his seniority.


The Carrier argues the Claimant clearly failed to comply with rule 14(b), and that the Organization's defenses are little more than mere assertions which do not qualify as substantive evidence (see Carrier Brief, pages 5-6). Additionally, even if the Claimant did try to contact the Supervisors of the junior employees he was seeking to replace, 14(b) specifically requires that the Claimant notify the targeted junior employee during their normal work hours (see Carrier Brief, page 8). Finally, the Carrier refutes claims by the Organization that on October 1 he attempted to find further displacements and was informed that there were no more. The Carrier's computer systems log such requests and it has no records indicating such contact with the Claimant on October 1, 2009. It does have records of the Claimant making such a request on October 2, 2009, but the report shows the October 2 report has multiple possible displacements (See Carrier Brief, page 9).


The Organization argues that the Claimant made multiple attempts to displace more junior employees. The Claimant stated he inquired about at least two jobs which were either awarded to other employees or cancelled before the 10 day deadline (DPG-09-268, timber and surfacing gang labor/anchor adjusting machine operator; DPG-09-270, rail anchor machine operator/laborer) (see Organization Brief, page 4). In addition, the Claimant later inquired into additional positions (DPG-09-277, rail anchor machine operator; DPG-09-272, laborer; DPG-09-278, laborer). Any failure to properly displace a more junior employee, the Organization says, was not due to the Claimant's inaction but because of the failure of Carrier supervisors to return his calls, and because the Carrier provided faulty information during the alleged October 1 phone call (see Organization Brief, page 5-6).

In coming to its decision the Board notes that the two main defenses the Claimant presents are (1) that he contacted various Supervisors and left them messages regarding junior employees that he was attempting to replace but these supervisors failed to get back to him on time and (2) that when he allegedly contacted the Carrier on October 1, he was told there were no openings for him to displace a more junior employee. In regards to (1), we find that while the Claimant did appear to make some effort to exercise his seniority, this effort did not follow the prescribed procedure in Rule 14(b). Rule 14(b) requires that attempts to displace be made by contacting the junior employee during the course of their normal shift. In regards to (2), we find no refutation of the Carrier's records, which suggest the Claimant actually contacted the Carrier on October 2nd and was at that time given a list of additional displacement opportunities (and not told, as Claimant alleged, that there were no such positions available). Additionally, the Carrier gave the Claimant leeway in this case by not considering his seniority as forfeited until October 14, which is more than the 10 days maximally allowed under 14(b) to displace another employee. For all these reasons, we find that the Claimant failed to meet his obligations under the language of Rule 14(b).

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


D. Pascarella
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on September 14, 2012.