

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 425

Docket No. 425
File 890235

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company
 (Former Missouri Pacific Railroad Company)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 2, when A. N. Botello was not allowed to displace R. Bustinza, Sr. on an "extra" position.

(2) Claim in behalf of Mr. Botello for eight (8) hours each workday, including overtime and holidays plus expenses for the period of November 28, 1988 through December 12, 1988.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant Laborer, A. N. Botello, in Gang 2897 was displaced (bumped) on November 23, 1988. Botello tried to displace a Junior Laborer, R. Bustinza, in Gang 3168 on November 28, Bustinza was working a position as Trackman in Gang 3168 while such position was being advertised and assigned. Botello's bump was denied under Rule 2 as said position was not yet "a regular assigned" position belonging to any employee.

Carrier properly asserted that Claimant Botello could have displaced a regular assigned employee, B. T. Trevino on Gang 9181. Trevino was a junior regular assigned employee. Botello failed to do so.

Rule 2(F) reads:


"(F) Employees entitled to exercise seniority rights over junior regular assigned employees must designate exercise of such rights within twenty (20) calendar days following their displacement or their return to service,...Otherwise, employees who fail to exercise displacement within the twenty (20) calendar days specified herein, shall forfeit their right to displace a regular assigned employee and shall take their place on the furloughed list with preference to work over junior employees thereon, and will be subject to bulletined positions in line with their seniority." (emphasis provided)

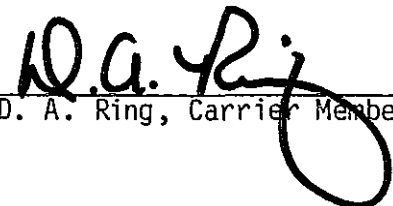
Rule 11-Bulletin, reads:

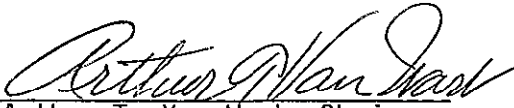
"(a) New positions and vacancies will be advertised promptly and in any case no later than ten (10) days following the establishment of the position or date the vacancy occurs. Temporary vacancies created by reason of a regularly assigned employee's absence due to sickness or injury, or authorized leave of absence when known to be of 20 days or more duration will, if the vacancy is to be filled, be advertised and assigned as "temporary vacancies" in the same manner as other positions are advertised and assigned under the provisions of this Rule 11... Employees assigned to temporary vacancies will be subject to displacement by senior employees who have displacement rights." (emphasis added)

When the facts of this situation are applied to the rules, the claim must be denied on the grounds that Claimant Bustinza was extra and unassigned and was filling the position while it was being advertised. In such circumstances, Claimant Botello could only exercise his seniority against another regularly assigned junior employee whether he be on a regular assignment or a temporary vacancy. Neither situation were true in this case. Therefore, this claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 26, 1990.