

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective agreement by failing to correctly inform Roadway Equipment Operator, M. A. Lawson, of his displacement rights when he became furloughed in force reduction on or about December 12, 1958.
- "(2) The Carrier shall now reimburse Claimant M. A. Lawson for an equal amount of time as was worked by a junior Roadway Equipment Helper during the period from December 15, 1958, to January 15, 1959, inclusive on account of the Carrier's action referred to in Part (1) of this claim."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

This case is a claim by Roadway Equipment Operator Mac A. Lawson for the pay he would have received during the time worked by a junior employee.

The organization claims, and claimant states by affidavit, that upon being furloughed December 15, 1958, claimant "Lawson promptly contacted the Division Engineer's office at Salt Lake City, under whose jurisdiction he was working but was advised that there were no employees then working in his seniority group, junior to him, over whom he might exercise his displacement rights."

The case must turn on whether claimant took the necessary steps to preserve his right to displace a junior employee, or at least such a substantial compliance with the rule and a good-faith effort to exercise his rights, that the carrier should have known, under all the circumstances, that claimant was attempting to exercise his rights to displace under Rule 36(c).

The carrier is not an absolute insurer that all employees will receive all of their seniority rights. The employee must take the steps as provided in the rules for exercising his rights, and considering all the evidence in this case we believe that claimant took the necessary steps.

For these reasons the claim should be sustained.

AWARD:

The claim is sustained.

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(s) Marion Beatty

Marion Beatty, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Organization Member

(s) A. D. Hanson

A. D. Hanson, Carrier Member

Omaha, Nebraska
November 21, 1960