

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32507
Docket No. MW-31141
98-3-93-3-41

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when Carrier failed and refused to allow Machine Operator J. W. Hinton to displace a junior employee at North Little Rock, Arkansas on November 8, 1991 (Carrier's File 920156 MPR).
- (2) As a consequence of the violation referred to in Part (1) above. Machine Operator J. W. Hinton shall be compensated for ‘. . . eight (8) hours pay, at the Trackman rate, for November 8, 1991 as a result of the violation listed.’”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

J. W. Hinton (Claimant) holds seniority as a Machine Operator and Trackman. On Monday, October 21, 1991, while on vacation, Claimant was displaced from his position as a Burro Crane Machine Operator on Gang 9113. The following day, October 22, 1991, Claimant contacted GMS Viola Fults to inform her that he had been displaced, but had not been given a displacement letter. GMS Fults advised Mr. Hinton that he had until Friday, November 8, 1991 to protect his bump.

Claimant further advised Ms. Fults that he intended to displace a junior employee as a Trackman on Gang 9415 at the Panel Plant. GMS Fults told Mr. Hinton that she would contact the Supervisor at the Panel Plant to let him know that Claimant had a legal bump even though he had not been sent the displacement letter. However, GMS Fults apparently forgot to do so, because when Claimant reported to the Plant at 6:00 A.M. on November 8, Supervisor A. Williams told him that GMS Fults had not contacted him. Since Claimant did not have a displacement letter, and the GMS had failed to contact the Supervisor, Mr. Williams refused to allow Mr. Hinton to displace the junior employee.

Shortly thereafter, Claimant returned to his home and again contacted GMS Fults. She admitted that she had "forgotten" to contact the Panel Plant Supervisor and immediately took steps to correct the situation via a conference telephone call. Therefore, on Monday, November 11, 1991 Claimant reported to the Plant and was permitted to displace and commence work.

On December 4, 1991, the Organization presented a time claim on behalf of Mr. Hinton, asserting that:

"Claimant should not have been denied the displacement as a result of the Carrier's failure to issue a displacement letter, when he was displaced October 21, 1991. It is our contention that certain rules of our current Working Agreement have been violated, especially Seniority Datum Rule 1, Seniority Rights Rule 2, and Force Reduction Rule 3.

Therefore, time is being claimed by and in behalf of claimant for payment of eight (8) hours pay, at the Trackman rate, for November 8, 1991, as a result of violation listed."

Carrier denied the claim, premised upon the following:

“It was Mr. Hinton’s responsibility to obtain a displacement letter from his Foreman at Wynne. The fact that he talked with Mrs. Fults did not relieve him of this responsibility. If he felt like a conversation with Mrs. Fults would clear up the situation on the morning of November 8, he could have waited until Mrs. Fults got to work at 6:45 a.m. and talked with her and Mr. Williams at that time.

Based on the above information, this claim is respectfully declined.”

There is no villain of this piece, but Claimant was misled to his detriment and, through no demonstrated fault of his own, deprived of a day’s pay to which he was contractually entitled. GMS Fults was acting as Carrier’s agent when she told Claimant that he could displace a junior employee at the Rail Plant at Little Rock, Arkansas, and that she would personally contact the appropriate Supervisor on his behalf so that he could do so without the displacement letter which ordinarily is required. The proximate cause of Claimant’s loss was GMS Fults’ forgetting to telephone the Superintendent. Therefore, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1998.