

The Fourth Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(American Railway and Airway Supervisors Association:
(A Division of TCU

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM: It is Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 17 - DISCIPLINE and Rule 10 - SENIORITY, when they refused to allow Mr. J. D. Fuller the right to exercise his seniority as Foreman on October 27, 1986, after being dismissed from his non-agreement position.
2. Because of said violative action, Carrier be required to restore Mr. Fuller to his proper seniority standing as Foreman, allowing him to make a displacement and further to compensate him for all lost wages he could have earned if allowed to make a displacement on October 27, 1986.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The record shows that Claimant, while employed by the Carrier in a nonagreement supervisory capacity, was dismissed from service on October 16, 1986.

The Board does not have jurisdiction over any dispute involving Claimant's dismissal while employed in a nonagreement supervisory capacity. Further, the Board has been referred to no rule requiring that the Carrier permit Claimant to make a displacement on an Agreement covered position upon dismissal from service in a nonagreement supervisory capacity. It is clear from the record that Claimant was not returning from a nonagreement position, but was removed from the nonagreement position for improper activity.

The record before the Board contains evidence that on October 28, 1986, Claimant attempted to place himself as a machinist at Fort Worth, Texas, but was withheld from service pending an investigation. This Board has no jurisdiction over any dispute involving Claimant's rights as a machinist. However, our attention has been invited to Second Division Award 11701 rendered on March 22, 1989, involving the same Claimant as involved herein, in which the request that Claimant be restored to service as a machinist was denied.

Based upon the entire record before this Board, the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1989.