

BEFORE PUBLIC LAW BOARD 5902

UNITED TRANSPORTATION UNION
YARDMASTERS DEPARTMENT

and

NORFOLK SOUTHERN RAILWAY COMPANY

Case No. 23

STATEMENT OF CLAIM:

Claim on behalf of Yardmaster Nathan Beal of Newark yard for not being allowed to make displacement to Abrams yard. Claim is for January 19, 2002 until claim is resolved and settled accordingly. Yardmaster Beale contacted Trainmaster Bostic on January 21, 2002, and told him of his intentions to displace Mr. Foley. Mr. Bostic said he would investigate this for himself and would contact Mr. Beal as soon as he got any information.

FINDINGS:

On or about January 19, 2002, the Claimant attempted to exercise his seniority, under Rule 6 of the collective bargaining agreement and Article V of the implementing agreement, to position YR-02 at Abrams Yard, after he was bumped from his yardmaster position at Newark, Delaware. The Claimant began qualifying, and receiving qualifying pay, at Abrams on February 2, 2002. On March 20, 2002, prior to the completion of his qualification at Abrams, the Claimant left Abrams, and then bid and was awarded a yardmaster position at Newark, Delaware, his home terminal. The Organization filed a claim on the Claimant's behalf, contending that he was not allowed to make a displacement into Abrams Yard. The Carrier denied the claim.

The Organization contends that the Claimant was not allowed to exercise his seniority into Abrams Yard, even though Labor Relations Officer Bolton assured him that this was a legal move in accordance with applicable rules. The Organization argues that Trainmaster Bostek had difficulty in understanding the clear, concise, and unambiguous language of Rule 6, Exercise of Seniority, and of Article V of the implementing agreement.

The Organization argues that the Carrier's decision to support Trainmaster Bostek's decision to procrastinate was done at its own peril. The Organization emphasizes that the Claimant did what was expected of him by calling on January 18, 2002, with his intentions. The Organization contends that the claim should be sustained.

The Carrier initially contends that contrary to the Organization's assertions, it did allow the Claimant to exercise his seniority. The Carrier maintains that it made a good-faith effort to allow the Claimant to qualify on the position in question, but the Claimant did not make this same good-faith attempt. The Carrier argues that the Organization has failed to provide substantial evidence that the Agreement was violated. The Carrier asserts that it has shown that when the Claimant did, in fact, show up to qualify, he was paid for qualifying.

The Carrier argues that the Organization has failed to provide any evidence to support the Claimant's version of the facts. The Carrier points out that even if the Claimant's version of events is accepted, it nevertheless is clear that the Claimant waited four days from January 18th, the date he spoke to the assignment clerk, before attempting to speak to an officer in Labor Relations on January 21st. The Carrier emphasizes that

Trainmaster Bostek discussed the Claimant's seniority move, as well as the qualifying pay issue, with Labor Relations on that same day.

The Carrier maintains that both Bostek and Labor Relations informed the Claimant, no later than January 22, 2002, that he should report for qualifying pending a decision on the pay issue. The Carrier argues that the Claimant did not report to qualify because he did not want to begin this process until he was assured that he would be paid. The Claimant did not begin qualifying until February 2, 2002, and the Carrier emphasizes that the Claimant was paid for every day that he spent qualifying from February 2 to March 20, 2002, when he bid on and was awarded a position back in Newark Delaware. The Carrier points out that the Claimant never completed qualifying at Abrams despite the fact that he was paid to qualify for more than a month.

The Carrier goes on to assert that the Claimant failed to follow the long-standing "work first, grieve later" rule. The Claimant refused to begin qualifying because he wanted to be paid for it. The Carrier emphasizes that the Claimant was told to begin qualifying pending a decision on payment. The Carrier argues that the Organization is attempting to characterize this dispute as a violation of the Claimant's seniority. The Carrier contends that being told to qualify without pay is not a violation of seniority, and there is no showing that the Claimant's seniority rights were violated. The Carrier maintains that it should not be penalized for time that the Claimant chose not to work.

The Carrier then argues that the penalty compensation claimed is excessive in view of the fact that the Claimant refused to work during the claim period, and in light of previous awards on this property. Moreover, there is no specific penalty prescribed in the

Agreement. The Carrier ultimately contends that the claim should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the agreement by failing to pay the Claimant for nine claim dates starting January 19, 2002. The record reveals that the Claimant was allowed to exercise his seniority but failed to begin qualifying for the job until an issue concerning his pay for qualifying was resolved. He did finally begin qualifying and, at that time, began receiving the qualifying pay at Abrams on February 2, 2002. Prior to that time, the Claimant had not reported to Abrams to begin qualifying.

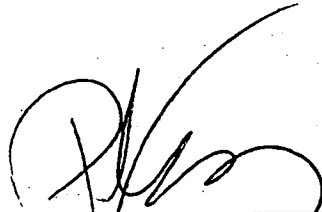
The record contains a three-page letter from the Claimant, setting forth his version of the facts. A review of the Claimant's own letter makes it clear that he failed to report on January 19, 2002, and instead engaged in numerous telephone conversations with various members of management and the Organization during the timeframe that he should have reported and begun to qualify. Consequently, this Board finds that there is no basis for the Claimant to receive any pay since he had not reported to begin qualifying during the period at issue.

The Claimant finally began qualifying and received qualifying pay at Abrams starting on February 2, 2002. On March 20, 2002, prior to completing his qualification at Abrams, the Claimant chose to leave Abrams and was awarded a Yardmaster position in Newark, Delaware.

It is fundamental that the Organization bears the burden of proof when making a claim for pay. In this case, the Organization and the Claimant had failed to show that the Carrier violated the agreement by not paying the Claimant for the period from January 19, 2002, to February 2, 2002. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 12/19/2003



CARRIER MEMBER

DATED: 12/19/2003

DISSENT