

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
) TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

This Committee, GO-386, which represents the former Great Northern Conductors and Brakemen schedules believes and maintains under existing agreements and handling that Theodore J. Cuffe should be placed immediately behind the December 20, 2003 graduating class, Robert T. Cagle, et al. (UTU File: GRIEVANCE SENIORITY PLACEMENT OF T. J. CUFFE; Carrier File: 53-04-0372)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Study of the record as presented shows that Mr. Cuffe graduated from Conductor training in Spokane, WA, a part of the Pacific Fifth Seniority District, on October 24, 2003. Thereafter, by letter of November 13, 2003 to the General Chairman of General Committee of Adjustment No. 386., Mr. Cuffe requested any assistance that the latter could offer in providing for a transfer to Whitefish, MT, one of three home terminals on the Rocky Mountain Fourth Seniority District. The General Chairman, by letter of November 17, 2003, forwarded the transfer request to the Carrier's Assistant Vice President, Labor Relations. Subsequently, on January 15, 2004, the transfer of Mr. Cuffe from the Spokane Furlough Board to Whitefish, MT was approved. Mr. Cuffe made his first qualifying trip at Whitefish on February 16, 2004, and thereafter marked up and worked as a Conductor for the first time at Whitefish on March 6, 2004

The training class for the Claimants in this case initiated on or about September 8, 2003, or at a time prior to Mr. Cuffe making a permanent transfer from the Pacific Fifth Seniority District to the Rocky Mountain Fourth Seniority District.

Pursuant to the terms of a Letter of Understanding dated January 16, 1998, the Claimants in this case established a seniority date on the Rocky Mountain Fourth Seniority District on the first date of their Whitefish, MT training class, or, namely, September 8, 2003.

Section 2.4.1 of a Tripartite Agreement effective December 1, 1998, which covers Whitefish, MT, prescribes in part that an employee transferring onto the Rocky Mountain Fourth Seniority District would be: "ranked on the roster at the new district . . . ahead of new employees who have not already established seniority."

It being evident that Claimants had established seniority on the Rocky Mountain Fourth Seniority District roster before Mr. Cuffe transferred, the latter should have been ranked on the roster behind the last of the eight members of the training class who attained seniority on September 8, 2003.


As concerns any monetary liability involving this claim, the Carrier submits it is in the same untenable position in this case as in certain prior cases where two or more General Committees of Adjustment have disagreed over the proper application of agreements applicable on their respective territories. In particular, the Carrier directs attention to the following excerpt from Award No. 77 of Special Board of Adjustment, UTU v. BN, Referee Paul D. Hanlon:


Again, here as in Award No. 47, the Carrier cannot equitably be held liable for any claims arising out of its handling of employees on these assignments to date. Consolidated seniority district rights to these jobs should be put into effect as soon as possible, but in any event not later than 30 days after the date of this award.

In the light of the above considerations, the Board finds and will so direct that the claim be sustained in that Mr. Cuffe's name and ranking on the Rocky Mountain Fourth Seniority District roster immediately follow that of the last person in the September 8, 2003 training class, Wes L. Kohler. Furthermore, the Board finds and will so direct that the Carrier not be held liable for any monetary claims arising out of this correction placement of Mr. Cuffe's name on the seniority roster.

AWARD: Claim disposed of as set forth in the above Findings.


Robert E. Peterson
Chair & Neutral Member


Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09