

The Carrier required each of the recalled employees to have a physical examination prior to returning to work. Ternest did report the following morning and was furnished the necessary papers and an appointment was made with the Carrier's doctor for March 16, 1976, when he was approved for return to service and was allowed to go to work, at 10:30 a.m. on that date.

When the Carrier did not reach Ternest on the telephone, the Carrier then called the next employee who was at home and scheduled a physical examination that afternoon and returned him to work the following day. The Carrier's doctor had available only eight examinations for eight employees each day and appointments were made as the employees were contacted. This dispute focuses about the fact that doctor's appointments were not available for Ternest until March 16, 1976, and the Claimant and certain other employees were not allowed to return to service until after such physical examinations, whereas junior employees who had been contacted by telephone were given earlier doctor's appointments, were approved and were returned to service prior to the senior employees.

Rule 15 applies generally to seniority in the filling of new jobs and vacancies. The pertinent rule here would appear to be Rule 23 (b), which reads:

"In the restoration of forces, senior laid off men will be given preference in returning to the service, if available, within a reasonable time. Employees desiring to avail themselves of the privileges of this rule must file their addresses with their employing officer at the time force is reduced, and renew same at each change of address. Failure to comply with this rule, or failure to return to the service within ten days, after being notified by mail or telegram sent to the last address given, or give satisfactory reason for not doing so, will eliminate such employees from the service."

The Carrier argues that Apprentices do not have seniority as contemplated by Rule 15 and that, therefore, Rule 23 is not applicable to Apprentices. The Board rejects this contention. There is no exclusion of Apprentices in the language of Rule 23 (b). Moreover, the Carrier maintains a seniority roster for Apprentices. Appendix F of the January 1, 1968, Agreement, under Paragraph Third states, "Regular and Helper Apprentices referred to in Paragraphs First and Second will retain their seniority as Apprentices." Clearly the Apprentices have relative seniority standing in their respective Apprentice groups. See Award 6846.

The issue here is not whether the Carrier has a right to require physical examinations on return from furlough. The claim here involves the administration and application of Rule 23 (b). Furloughed employees are entitled to the protection of the Rule. The Carrier's actions in delaying the physical examination of Claimant Ternest, under the circumstances of this case, deprived the Claimant of the preference as the senior laid off man that Rule 23 (b) provides. The Carrier's action deprived Claimant Ternest and other

claimants, if any, who were similarly situated to Ternest of the opportunity to maintain their relative seniority standing for the purposes of obtaining a Journeyman date by way of accumulated hours.

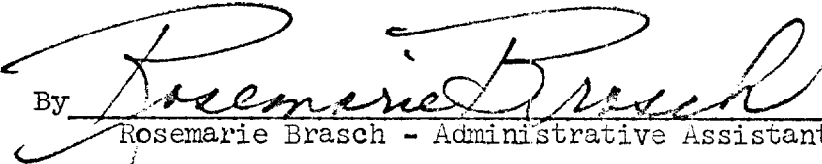
The Board is of the view that the Carrier could have avoided this situation by earlier anticipation of the authorization to return the employees or by holding appointments open for physical examinations when employees were not immediately contacted by telephone on March 11. The claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.