

Award No. 15789
Docket No. MW-13890

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
WESTERN MARYLAND RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it recalled Mr. E. E. Minnick, who is junior in service to Mr. E. A. Gaither, to fill a temporary vacancy in a bridgeman's position for eight (8) working days for the period beginning with April 13, 1961 and extending through April 24, 1961.

(2) Mr. E. A. Gaither be allowed eight (8) days' pay at the Bridgeman's straight-time rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant E. A. Gaither and Mr. E. E. Minnick have established and hold seniority as Bridgemen within the Carrier's Bridge and Building Sub-department. Claimant Gaither is senior to Mr. Minnick in said classification.

Prior to April 13, 1961, Bridgemen Gaither and Minnick had been furloughed because of force reduction.

During the period beginning with April 13, 1961 and extending through April 24, 1961, the Carrier assigned Bridgeman Minnick to fill a temporary vacancy in a bridgeman's position which had been created by the illness of the regular incumbent thereof.

Claimant Gaither was available, willing and qualified to fill the temporary vacancy but was denied the right to do so.

The Agreement in effect between the two parties to this dispute dated September 16, 1945 (reprinted January 1, 1953), together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On April 13, 1961 a temporary Bridgeman vacancy occurred at Blue Lick, Pennsylvania due to the illness of regular Bridgemen. Furloughed Bridgeman E. E. Minnick was used to fill the position on April 13, 14, 17, 18, 19, 20, 21, and 24, 1961.

The claimant was also a furloughed Bridgeman and contends that he should have been recalled from furlough for the relief work instead of Mr. Minnick.

OPINION OF BOARD: Claimant Gaither and Mr. Minnick have established and hold seniority as Bridgemen within the Carrier's Bridge and Building Sub-Department. Claimant is senior to Minnick in this classification. Both men had been furloughed prior to April 13, 1961 because of a reduction in force. For a period of 8 days from April 13, 1961 through April 24, 1961, the Carrier assigned Minnick to a temporary vacancy of Bridgeman, a position vacated due to the temporary illness of the incumbent.

Petitioner alleges a violation of the contract in that the Claimant, being senior to Minnick, and no question of ability either arising or at issue, hence presumably equal, should have been given this assignment. Petitioner also advances the argument that Carrier for many years, has never deviated from the practice of calling and using the senior furloughed employee to fill such a temporary vacancy.

Carrier defends its action in this case by stating that the junior employee had filed a written notice with Carrier with a copy to the General Chairman, asserting his availability for such temporary assignment. This was in compliance with the provisions of the National Agreement of August 21, 1954, specifically Article IV thereof. Claimant did not file such a notice, thereby placing Minnick in the position of the senior man qualified.

The language of the National Agreement is clear and specific. It requires an employee to file a notice of availability in writing with the Carrier and a copy of such availability with the General Chairman. This Agreement was made subsequent to the effective date of the rules of the Contract upon which Petitioner relies, hence the former must prevail. We dismiss the defense of practice raised by the Petitioner, because it is not specific enough as to the years covered whether prior or subsequent to the 1954 Agreement, nor has Petitioner submitted any substantive evidence to sustain his allegation of practice. Lacking such evidence and in consonance with the clear meaning of the 1954 Agreement, we will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 28th day of July 1967.

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