

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20196
Docket Number SG-19944

Frederick R. **Blackwell**, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Detroit, Toledo and **Ironton** Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Detroit, Toledo and **Ironton** Railroad Company that:

Leading Signal Maintainer C. A. **Schmenk** retain the status of a furloughed employe and be furnished copies of all bulletined vacancies while on furlough.

OPINION OF BOARD: Prior to this dispute the Claimant was the incumbent of a Lead Signal Maintainer position at Leipsic, Ohio. When his position was abolished effective March 15, 1971, he notified Carrier in a March 17, 1971 letter that he was assuming furlough status under Rule 35 of the Agreement. Carrier's Superintendent of Signals & **Communications**, Mr. A. B. **Swartzwelder**, acknowledged receipt of Claimant's letter electing furlough status under Rule 35 in a letter dated March 17, 1971. Subsequently, however, in a March 22, 1971 letter, Mr. **Swartzwelder** recalled Claimant from furlough to fill a Signal Maintainer vacancy at Flat Rock (88 miles from Leipsic); this letter stated that the recall was in accordance with Rule 43 of the Agreement and that Claimant must return to work within ten (10) days or forfeiture of seniority would result. The General Chairman protested the recall action to Mr. **Swartzwelder** in a March 24, 1971 letter which stated that Rule 43 did not apply to Claimant's situation and that Rule 35 was still in effect. Notwithstanding this protest Mr. **Swartzwelder** wrote to Claimant under date of April 21, 1971, advising that, since Claimant had not reported for duty on the position at Flat Rock, he had voluntarily forfeited his seniority under Rule 43. The General **Chairman** appealed to have Claimant restored to furlough status, on the ground that Rule 35 governed the situation, but Carrier declined to do so, stating that Rule 43 controlled and that Claimant had voluntarily forfeited seniority thereunder.

Rules 35 and 43 read as follows:

"Rule 35. (a) When force is reduced or positions abolished, an employe affected will have the right to displace any employe with less seniority rights, except as provided in Rule 37. **However, he need not exercise such displacement rights unless he so desires and when displacement rights are not exercised he will assume the status of a furloughed employe.**

"(b) The junior **employee** of a seniority class who does not desire to displace in a lower seniority class will retain and accumulate all seniority rights. However, he must return to service in the **class** and at the point from which he assumed the status of a furloughed **employee** or in **any** higher class at such point in which he holds unrestricted rights when advised by the Management of reasonably continuous employment being made available or forfeit all such rights. For the purpose of this provision, Flat Rock and north will be considered onepoint. (Underlines added)

(c) "Reasonably continuous **employment**" as used in this Agreement shall be understood to mean that full-time employment, as afforded the regular assigned forces, may be expected for a period of not less than 90 days."

Rule 43. (a) Furloughed employees desiring to retain their seniority rights must file their addresses in writing with the Supervisor of Signals and **Communications** and with the General Chairman within ten days from date of reduction. **They must immediately** notify in writing both the Supervisor of Signals and **Communications** and General Chairman of any change of address. Failure to comply with these provisions or to return to the service within ten days after being notified by the Management of 'Reasonably continuous employment being available, will cause forfeiture of all seniority rights unless a leave of absence has been obtained under the provisions of Rule 39. (Underlines added)

(b) Furloughed employees or employees reduced to a lower seniority class in reduction of force will be recalled to service or to fill positions in the higher seniority class in the order of their seniority. When filling temporary positions, if the senior furloughed **employee** fails to respond or in the case of an **emergency**, the senior available furloughed **employee** may be used until the senior furloughed **employee** reports."

These rules produce two diametrically opposed results when applied to the instant facts, so, as the parties concede, one rule must give way to the other. The Employees assert that the underlined text of Rule 35 has specific application to the Claimant's situation and that where two rules conflict, the one having specific application is controlling. The Carrier's response is that Rule 35 applies only to recall to service at the point of furlough, in this instance, Leipsic, but that Rule 43 has **systemwide** application and therefore the underlined text of the latter rule applies to points other than where furloughed. The Carrier says further that the flaw in the Employees' position is that it would permit employees to remain away from Carrier's **employ for** indefinite periods of time, retain their seniority, and still not be required to return to service when recalled from furlough.

In appraising the foregoing, and the whole record, it becomes apparent that Rule 35 specifically vested rights in the Claimant which Rule 43, under Carrier's view, would divest and take away. It is also apparent that Rule 35 is a specific rule while Rule 43 is a general one. When two such rules conflict, the specific controls over the general and, thus, we conclude that the Employees' position is well taken. Award No. 8275. In substantive effect Rule 35 is an exception to Rule 43 and it seems clear that acceptance of Carrier's position would have the practical result of virtually eliminating this exception. This, of course, would **amount** to rewriting the parties' agreement which this Board has no power to do. Also we note that the flaw cited by Carrier, of an employee accruing seniority for an indefinite period while on furlough status, has already been expressly provided by the agreed text of Rule 35 for the situation presented by this dispute; consequently, whatever problem arises here is the sole concern of the parties. This Board's only function is to apply the text of the rule as written to the facts of this particular dispute.

In view of the foregoing we shall sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of **March** 1974.