

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20550
Docket Number MW-20651

Robert A. Franden, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (Norfolk and Western Railway Company

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Extra Gang Laborer **Larry Wendland** to service on and subsequent to May 22, 1972 (System File **MW-MOB-73-1**).

(2) Extra Gang Laborer Larry **Wendland** be allowed eight (8) hours of pay at his straight-time rate for each work day sixty (60) days retroactive from February 7, 1973 to September 26, 1973 because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimant was furloughed on April 21, 1971. He **was** recalled to service on September 26, 1973. During the Intervening period a junior employee was recalled to service. There is a conflict as to whether said junior employee was recalled to service at Burlington Junction as the Carrier alleges or at **Kirksville** as the Organization alleges.

Under Rule 4 "Force Reduction" quoted below, the claimant would have been entitled to be recalled first if the junior employee was recalled at **Kirksville** which is within a 50 mile radius of **Moulton**, Iowa, the headquarters from which claimant was furloughed.

"Rule 4 - Force Reduction

(a)-2. Laborers affected must, if their seniority is sufficient, displace a junior laborer with headquarters with a radius of 50 rail miles from the headquarters of the gang from which **laid** off or displaced and may, if their seniority is sufficient, displace a junior laborer at any point on the Division Engineer's territory. These displacement rights are subject to the provisions of Rule 2, Paragraphs (g) and (h).

In the application of Rule 9 when forces are increased, the 50 **mile** radius provisions, above, will govern. The company will not be required to **recall** an employee when the force is increased on a gang with headquarters more than 50 rail miles from the headquarters of the gang from

which laid off, and if the company should recall an employee for service on a gang with headquarters outside that 50 mile radius, such employee's refusal to return to service in response to that call will not forfeit his seniority.

MEMORANDUM OF UNDERSTANDING

In the application of the fifty (50) mile radius provisions of Rule 4 (a) 2 of the agreement effective December 1, 1963, the term 'headquarters of the gang from which laid off or displaced' in the first paragraph and the term 'headquarters of the gang from which laid off' in the second paragraph, means the headquarters of the gang where the employee holds seniority as laborer."

The record is not clear as to whether the junior **employee was** recalled to service within a 50 mile radius **of** the headquarters from which claimant **was** furloughed. The claimant has the burden of proof in this regard and has failed to meet it. We **will** deny 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third Division**

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.