

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22165
Docket Number CL-22296

Abraham Weiss, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Elgin, **Joliet** and Eastern Railway **Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8497) that:

1. Carrier violated the **effective** Clerks' **Agreement** when it failed to return furloughed **employee** J. D. Reid ~~to~~ service effective August 23, 1976 in accordance with his **seniority** rights.

2. The Carrier shall now compensate **Mr.** J. D. Reid for eight (8) hours' pay at the pro rata rate of Position No. **G. T.** 1175-R **commencing** with August 23, 1976 and **continuing** each and every Saturday through Wednesday thereafter that a like violation occurs.

OPINION OF BOARD: Claimant J. D. Reid, with a seniority date of **September** 12, 1973, ranked No. 259 on the roster for Seniority District No. 4. Another **employee**, C. L. Carter, with a seniority date of **April** 1, 1974, ranked No. 263 on the same **roster**. Both Reid and Carter were on furlough status on August 23, 1976, the date this dispute arose due to the Carrier issuing Bulletin No. 283-A awarding Position No, G. T. 1175-R to Carter as the "Senior Furloughed **Employee.**" The Organization **argues** that Reid, being senior to Carter, should have been awarded the position **under** the provisions of Rule 19(g) reading:

"When forces are increased or vacancies occur, furloughed **employees** shall be returned to **service** in the order of their seniority rights. Such **employees**, when available shall be called in **seniority order** for all **extra** work, short vacancies **or** vacancies occasioned by the filling of positions **pending assignment** by **bulletining** which are not filled by **employees'** voluntary rearrangement of **regular** forces.

'when a bulletined **new** position or vacancy is not filled by an employe in service senior to a furloughed employe who has protected his seniority as provided in this role, the senior furloughed employe shall be called and assigned to the position. Furloughed employes failing to return to **service** within seven (7) calendar days after being notified (by certified or registered mail, return receipt requested, sent to the address last given) or give satisfactory reason for not doing so will be considered as out of the service."

X- The Carrier does **not** dispute **the fact** that Carter was junior to Reid when Position No. G.T. **1175-R** was awarded on August 23, 1976, nor that both Reid and Carter were then, in fact, furloughed employes subject to the provisions of Rule 19(g). Carrier contends, however, that through error or inadvertence Reid was shown in its records as an active employe at that time, advancing considerable argument on the cause therefor. Carrier attempts to assign responsibility for the error to several factors, including Reid's actions in exercising various options available to furloughed employes at the time he first became furloughed, and subsequently. Carrier's arguments on responsibility for the **error** are not persuasive, nor are we convinced that Reid's furlough and subsequent exercise of waivers to protect short vacancies, etc., permitted under the applicable language of the rule, was unique or different from the norm. We fail to see how Reid's conduct contributed to Carrier's basic error in showing him actively **employed** at times he was, in fact, furloughed and, thus, it was Carrier which was responsible for Carter being recalled ahead of **Claimant** Reid.

Carrier also raises two issues with respect to the parties' time limit rule in defense of **payment** of the claim: (1) that it was somehow unusual or improper for the general chairman to file the claim at the initial level, which argument was abandoned in later handling; and (2) a tortured rationale, not vigorously pursued, that, because some 16 months earlier, on or about April 1, 1975, another junior **employe** was similarly recalled to service around claimant, the time limits **commenced running**. Thus, Carrier reasons, the failure to file claim for the April 1, 1975 "violation" bars consideration of the instant claim. We do not view the parties' time limits agreement as operating in this fashion. In our judgment, each recall of an employe junior to claimant during his lengthy period of furlough is a separate

and distinct agreement violation and the failure, on a **timely** basis, **to** prosecute a claim on a prior recall to service violation, regardless of the reason, cannot be used to defeat a valid claim on a subsequent similar violation. Thus, we will reject this and the other time limit arguments raised by the Carrier.

The claim will be sustained for eight hours' pay at the pro rata rate of Position G.T. 1175-R for each day **commencing** August 23, 1976, that an **employee** junior to Claimant was worked on that position until such **time** as claimant is, or was, returned to service.

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 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 31st day of July 1978.