

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23383  
Docket Number MW-23048

James F. Searce, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement when, on March 16, 17, 20 and 21, 1978, it assigned and used a trackman to fill a temporary machine operator's position (Ballast Regulator) instead of recalling and using furloughed Machine Operator J. L. Page (System File 37-SCL-77-40/12-13(78-12) J).

(2) As a consequence of the aforesaid violation, furloughed Machine Operator J. L. Page shall be allowed twenty-eight and one-half (28-1/2) hours of pay at the applicable machine operator's straight time rate."

OPINION OF BOARD: Claimant was furloughed at end of his work day on March 15, 1978. At that time the Claimant was a "Class II Machine Operator" assigned to Track Subdepartment, Group A; his job classification was in Rank 4 in terms of seniority.

On March 16, the Carrier had need of an operator on the "ballast regulator" - - the same equipment the Claimant had previously operated; the record indicates such need came after commencement of the shift. The same need prevailed on March 17, 20 and 21, 1978. The Carrier assigned an employee classified as a "Trackman" to do such work. The record shows that employees classified as Trackman are also in Group A, but at Rank 6; essentially, the Claimant appreciated an increase in pay and responsibility as a result of such assignment.

The Organization cites Section 2 of Rule 8 and Section 5 of Rule 13 as the basis for its assertion that the Claimant is entitled to pay for the time when the ballast machine was operated by other than the Claimant:

"Rule 8, Section 2

Vacancies of seven (7) calendar days, or less, may be filled by using any eligible employee of the group and seniority district; however, preference will first be given to employees of the rank in which the vacancy exists who may be out of work or working in a lower rank account of reduction of forces.

"Rule 8, Section 2 continued

This Section will **not** apply to temporary **vacancies** due to **vacation provided** for in the 'Vacation Agreement' signed at **Chicago** on December 17, 1941."

"Rule 13, Section 5

Employees temporarily out of the service, or serving in lower ranks, will be given opportunity to return to the service, or to such higher rank in the service in which they have established seniority, in the order of their seniority to fill temporary vacancies or positions, as provided in Rule 8."

The Carrier cites Section 3 of Rule 13 as the defense against such claim:

"section 3

An employee affected by force reduction or abolishment of a **gang**, shall, within a **period** of thirty (30) **calendar days from** the date of his **displacement**, displace any junior employee in his group. An employee **failing** to comply with the above will forfeit his **rights** to place **himself** in any rank in which he holds seniority; except by successfully bidding on **and** being assigned to a new position or Vacancy, or by resuming active service **through** recall to duty in accordance with the **provisions** of Section 6 of this Rule."

The Carrier points out that the Claimant, furloughed on March 15, 1978, had the right to exercise his seniority the following day, but failed to do so until March 21. As such, per the Carrier, it was the Claimant's own lack of Initiative that made him unavailable for work immediately after furlough and failing to do so on March 16, 1978, lost for him the opportunity to work at whatever position to which he could displace.

We are unmoved by the Carrier's rationale in this case. Rule 8 is clear in its intent and the situation commencing March 17, 1978 and the succeeding day 6 when the ballast machine was in operation cannot be deemed otherwise. The events of March 16, wherein the need arose after the shift commenced, was properly handled by a temporary upgrade. The fact that the Claimant did not exercise his displacement rights on March 16, cannot be construed to relieve the Carrier of its duty to recall employees as required under Rule 8.

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

Claimant shall be paid for March 17, 20, 21, 1978 at the  
appropriate rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Executive Secretary

Dated at, Chicago, Illinois, this 15th day of September 1981.