

4829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25004
Docket Number MW-25081

Thomas F. Carey, Referee


(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTA: {

(Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it failed to permit **Trackman J. L. Harlow** to displace a junior **trackman** (A. **Puckett**) on the Clifton Forge Division December 10 through December 23, 1981, both dates inclusive (System File **C-TC-1273/MG-3331**).

(2) Claimant J. L. **Harlow** shall be allowed pay (straight time and overtime) equal to that paid to **Trackman** A. Puckett during the claim period." 

OPINION OF BOARD: The Claimant was furloughed from his **Trackman** position by reason of **force** reduction and **filed** his cut-off notice at this time. Subsequently, the Claimant advised the Track Supervisor **that** he wished to displace on his home division (Clifton Forge), but was informed that there were no positions available.

The record indicates that the Claimant was offered the opportunity to accept extra work on a day-to-day basis, but that he declined. Testimony also shows that **Trackman** Puckett also furloughed and junior in seniority to the Claimant, requested to protect extra work and reported each day to find out if work was available. Nothing in the record indicates this work was not extra and had Claimant properly requested this assignment, his seniority would have prevailed. Additionally, Third Division Award No. 22517 (Sickles) held that:

"Notwithstanding the language of the rule concerning protection of seniority, we find absolutely nothing unreasonable about the suggestion of Carrier to the Claimant, and his failure to comply therewith resulted in his failure to work **during** the pertinent period of time."

Similarly, in Referee Wolf's Third Division Award 13445, he found:

"Bidding on a regular assignment is not equivalent to **exercising** a desire to displace on a temporary position. Carrier was under no obligation to assume that an **employee** wished to fill a temporary job because he expressed an interest in the permanent job."

The Claimant was afforded the opportunity to protect extra work assignments, but declined and is thus unable to submit proof of an Agreement violation.

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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

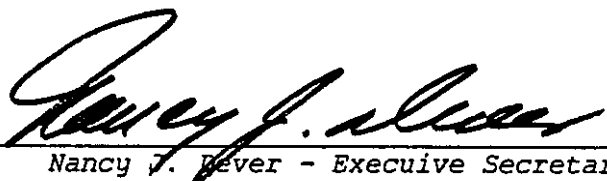
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.