

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25269
Docket Number MW-25443

Paul c. carter; Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(The National Railroad Passenger Corporation
(**Amtrak**) - Northeast Corridor)

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

(1) The Carrier violated the Agreement when it improperly closed the service record of **Trackman** Reginald **Childs** (System Docket **313**).

(2) **Trackman** Reginald Childs shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The record shows that Claimant entered Carrier's service as a **Trackman** on April 21, 1977. According to the Carrier, on August 26, 1981, Claimant's position as **Trackman** in the Lamokin Track Laying System (**T.L.S.**) Support Gang was abolished. Nine days later, on September 4, 1981, at about 8:30 a.m. Claimant went to Marcus Hook and attempted to exercise his seniority by making a displacement in Gang A-012, but was not permitted to make the displacement because he failed to do so prior to **the** 7:00 a.m. starting time of Gang A-012. The Carrier states that at no time thereafter did **the** Claimant make any effort to exercise his **seniority**, **nor did** he file furlough papers **within** ten days as required by the applicable Agreement.

The contention has been made that Claimant actually displaced a junior **employe** on Gang A-012 on September 4, 1981, worked a short time **with** the Gang, became sick and so advised his Foreman who excused him from work. There is nothing in the record to support such contention. The Carrier has contended from the beginning that Claimant **was** not permitted to make a bump on September 4, 1981 because "bumps are required to take place at West Yard prior to 7:00 a.m.," and that Claimant was not paid for any time on September 4, 1981, nor did he make a claim for any payment for work performed on that day. In the process of handling on the property, the Assistant Chief Engineer Track advised the District Chairperson:

"within the ten day period subsequent to his abolishment he (claimant) filled out three separate bump slips on three different occasions and failed to make a bump in any of these gangs. The gangs were Night High Speed Surfacing, the Day Wilmington interlocking and the Wilmington Tie Gang.

The foreman and **trackmen** of Gang A-012 report to West Yard - their headquarters each and every morning. Therefore, bumps are required to take place at West yard prior to 7:00 a.m.

"On September 4, 1981 he proceeded to Marcus Hook and at approximately 8:30 a.m. attempted to make a bump. However, he was not allowed to because it was beyond the 7:00 a.m. deadline.

He was not paid any time on September 4, 1981 - proving he did not work at or make a **bump** to any position.

Not one of the above facts were disputed, therefore, your request for reinstatement is denied."

In the handling of the dispute with Carrier's highest designated Officer of Appeals, that Officer advised the General Chairman on June 28, 1982:

'In your letter dated March 4, 1982, which advanced this case to this level for handling, you stated that it was the Organization's contention that on Friday, September 4, 1981, the Claimant was permitted to exercise his seniority to a position with the same Gang A-012, and that the claimant worked until 8:30 AM when he became ill and advised the foreman that he was going home. It was your further contention that on Monday (*sic*) September 8, 1981, that the Claimant attempted to **return** to work **with Gang** A-012 and was advised that his bump would not be honored and that the Claimant was then past the ten (10) days in which he could exercise his seniority.

Our review of the records in the instant case, has revealed that the Claimant's position **with** the Track Laying System Support Gang was 'abolished on August 26, 1981. On September 4, 1981, at approximately 8:30 AM, the Claimant attempted to exercise his seniority in Gang A-012 but inasmuch as he failed to exercise his seniority before the 7:00 AM starting time of Gang A-012, he was not permitted to bump. Contrary to the Organization's **contention**, the records do not reflect that the Claimant was compensated for any time worked on September 4, 1981, or that the Claimant properly exercised his seniority on that day, and the Organization has **failed** to present any probative evidence to support any of those contentions. In view of the above, the Claimant was clearly in violation of the current effective Agreement with the Organization, specifically Rule 187 which governs the displacement rights of employees, when he failed to exercise his seniority within the ten (10) days as required by this rule.

The Carrier is also constrained to advise that no rule of the Agreement was cited by the Organization or the Claimant in support of the claim at any level of handling on the Carrier's property. The Carrier is under no obligation to search for some basis for claims where Claimants fail to do so.

For these reasons, and those asserted in previous Carrier correspondence, which are incorporated herein by reference, we find no merit to your claim and deny it in its entirety."

Based upon our review of the on-property handling, we find that ~~the~~ Petitioner failed to prove that Carrier's actions were in violation of the Agreement. It is well settled that evidence, issues and defenses not raised in the on-property handling, may not be raised for the first time before the Board. The Board has issued numerous awards to the effect that when a Carrier specifically advised the Organization that it has failed to identify the rule or rules alleged to have been violated, the Organization is obligated to advise the Carrier of the rule under which it seeks redress. See Awards Nos. 19855 and 21858. We will deny the claim for lack of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute, due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 O. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.