

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25465
Docket Number CL-25391

Herbert L. Marx, Jr., Referee

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

PARTIES TO DISPUTE: (

(The **Denver & Rio Grande Western Railroad Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood IGL-9838)
that:

1. Carrier violated Rules **11(e)(t)(u)**, **16(g)** and other related rules of the Agreement, when on September 1, 1982, it called back Ms. V. **Bargas**, junior employee, to the north yard extra board instead of Ms. S. **Munoz**, senior employee.

2. Carrier will now be required to pay (at pro-rata) Ms. **Munoz** guarantee, per Rule **11(e)**, from September 1, 1982, to continue until this claim is resolved, or until such time she would have been cut from the extra board.

OPINION OF BOARD: Claimant was furloughed from the position of Calculating Machine Operator as of August 6, 1982, but was permitted to fill a vacation vacancy the following week from August 9 to August 13, 1982. Upon her being furloughed, the Claimant gave timely notification to the Carrier of her availability for the North Yard Extra Board. At that time, **since** there was no one junior to her on the Extra Board, she was also furloughed from the Extra Board.

Short-term vacancies occurred for September 1-9 and September 23-28, 1982, and an **Employee** junior to the Claimant was recalled from furlough to fill these vacancies. The Carrier stated that it bypassed the Claimant in favor of the junior **Employee** because the latter was qualified to perform the variety of assignments in the short-term vacancies, while the Claimant was not qualified.

The **Organization** relies on Rule 16, Reducing Forces. which reads in pertinent part as follows:

"(g) Furloughed employees shall be returned and required to return to service in the order of their seniority rights."

The Carrier, **however**, states that a "qualified" employee was required for the short vacancies and, in defense of its right for such qualification, points to Rule 11, which provides:

"(a) All employees not holding a regular assignment will be designated as an unassigned employee.

(b) Unassigned employees will be placed on the Extra Board established for the district to the extent that their services can be utilized:

The Carrier argues that the **Claimant**, in her furloughed status, was an 'unassigned' employee and her lack of qualification meant that she could not be 'Utilized' for the short vacancies.

Rule **16(g)** is, however, clear, precise and without exception. It states that furloughed employees shall be returned in the order of their seniority. If there were to **be** exceptions as to qualification, such would necessarily be contained in that rule. Rule **11(b)** is somewhat less precise in that it **concerns** only whether an employee can be **"utilized"**. Put another way, Rule **16(g)** does not specify recall by seniority and qualification. It simply states, as applicable here, that the Claimant was **entitled** to be offered recall prior to a junior employee.

Claimant shall receive compensation for all time worked by the junior **Employee** in September, 1982.

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

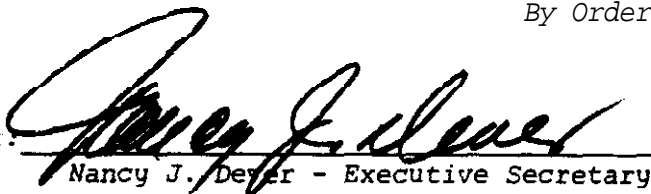
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

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

Attest.


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.