

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25597

Locket Number MW-25720

Jams Robert Cox, Referee

PARTIES TO DISPUTE: (**Brotherhood** of Maintenance of Way **Employees**
(Burlington Northern Railroad Company
(Former Colorado and Southern Railway Company)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Laborer G. D. Preston. Jr. on and subsequent to May 3, 1982 (System File C-35-821.

(2) Superintendent J. C. Pohl failed to disallow the claim (appealed to him under date of November 5, 1982) as contractually stipulated within subsections (a) and (c) of Rule 27.

(3) As a consequence of either or both (1) and/or (2) above, Claimant G. D. Preston, Jr. shall

"be allowed 8 hours at the straight time rate of pay for each regular work day and any overtime hours involved at the time and one-half rate of pay commencing 60 days retroactive of this filing and **continue** until such time as violation ceases."

OPINION OF BOARD: In 1979, a Pueblo, Colorado welding facility commenced operations supplying welded rail for Carriers including the Burlington-Northern and Colorado and Southern Railway Co. Claimant G. D. Preston. Jr. had Burlington-Northern District seniority of July 30, 1979, as a Laborer. He established Plant Seniority at the Pueblo facility under the Colorado and Southern working Agreement October 25, 1979.

June 27, 1980, Claimant was laid off pursuant to the C&S Agreement as part of a reduction in force but subsequently recalled to service on the **Burlington-Northern** District territory September 30, 1980. This assignment, however, lasted only until November 28, 1980, when he was again laid off. When recalled March 16, 1981, to Burlington-Northern service at **McCook**, Nebraska, he did not respond and, on April 6, 1981, was terminated from the service of the **Burlington-Northern**.

Approximately one year later, in early May, 1982, a furloughed **worker** junior to Claimant was recalled by C&S to the Pueblo plant. Claimant was not called back, however, since he had been terminated for failing to answer the **March 16, 1981** recall to **McCook** and had lost all seniority rights on the **Burlington-Northern**.

After having recalled all laid off employees at Pueblo, the remaining unfilled labor positions were advertised to the **Burlington-Northern** and Colorado and Southern Seniority Districts. September 7, 1982, a Claim was filed by the General Chairman of the Colorado and Southern Brotherhood of Maintenance of Way **Employees** asserting that the Carrier had improperly failed to recall Claimant in violation of Colorado and Southern Rule 14.

In accordance with a Memorandum of Agreement dated July 1, 1977, employees assigned to the rail plant at Pueblo had established seniority on a separate **roster**. The evidence indicated that, upon his 1980 layoff, Claimant used a BN form to file his correct name and address with the appropriate C&S representative. Following his layoff Claimant received surgery for an on-the-job injury and had contact with the C&S Claim Department through the date he was released to work in March, 1982. As noted above, the C&S recall occurred in May, 1982.

The Organization states that Claimant did not learn that junior employees had been recalled to the welding plant until Fall, 1982, when he thereafter promptly filed his Claim (September 7, 1982). The Claim asserts that Carrier violated Agreement Rule 14 through its failure to properly recall Claimant to service at the Pueblo rail plant. The Welding Plant Supervisor explained that he had not notified Claimant of recall since he had been informed that Claimant was no longer an **employee** of the Company.

The Organization contends that it was Claimant's father who had failed to respond to the recall in the track department at **McCook**, Nebraska and was terminated April 6, 1981.

The Carrier maintains that all seniority rights of Claimant at the Welding Plant were based upon his employment relationship with the **Burlington-Northern** and that in any case, he had not filed any recall form for service at the Welding Plant under Colorado and Southern Schedule Agreements. Examination of the recall form itself does indicate that it was a Burlington-Northern **document** that he signed when furloughed in June, 1980.

The evidence indicates that the Burlington-Northern Railroad owns and operates the Pueblo Welding Plant and that employees worked under the Colorado and Southern working Agreement at that location and were supervised by Burlington under a billing arrangement. Claimant held no seniority on the Colorado and Southern Seniority District except on the Welding Plant **roster**.

Colorado and Southern Railways merged into the Burlington on January 1, 1982 but the Colorado and Southern working Agreement remained in effect at the Welding Plant until August 1, 1982 when it was replaced by the Burlington-Northern contract. It was in effect during the May, 1982, recall.

Claimant retained seniority rights at Pueblo as of the date of the May, 1982, recall. That seniority was separate and distinct from the B-N seniority he allegedly lost in 1981. While the Welding plant Supervisor failed to recall Claimant based on misinformation concerning his status with the merged Company, Claimant contributed in part to the confusion by filing a B-N Recall Form with the C&S.

Under these circumstances, the Board sustains the Claim, reinstating Claimant's C&S Pueblo facility seniority and reinstating him to the position that seniority would take him, but without back pay.

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.