

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25683
Docket Number MW-25711

David P. Twomey, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: {
(Consolidated Rail Corporation

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 Foreman-Track Inspector **M.E. Sanderson** (System Docket 751).

(2) The claimant shall be returned to service with seniority and all other rights unimpaired.

OPINION OF BOARD: The Claimant, M. E. Sanderson, was employed as a **Foreman-Track Inspector** on the Harrisburg Division of the Carrier's Eastern Region prior to the closing of his service record.

On October 9, 1980, Mr. **Sanderson** was displaced from his regularly assigned position by senior Foreman-Track Inspector **Kelso**. In accordance with **Agreement rules**, the Claimant was thereby required, within ten (10) days, to either displace a junior **employee** or file his name and address with his Supervisor to retain his seniority. On Thursday, October 16, 1980, Mr. Sanderson telephoned Supervisor Clyde Campbell at Enola, Pennsylvania, to ascertain whether he could exercise his displacement rights to obtain a position at Enola. Mr. Campbell advised him of a bulletin advertising for applications for a position at **Enola**, and that he could submit an application for the position and work the position pending the completion of the advertisement period. Mr. Campbell advised Mr. Sanderson to begin filling the position at Enola on Friday, October 17, 1980. When he reported to Enola on Friday morning, however, he was advised that there was no position available. Mr. **Sanderson** then traveled to the Carrier's offices at Harrisburg on the afternoon of Friday, October 17. He submitted applications for two positions headquartered at Harrisburg which were undergoing advertisement by bulletin and he then spoke with Clerk E. Nelson, who customarily handled such matters at Harrisburg, about exercising his seniority to obtain one of the two advertised positions. Clerk Nelson advised Sanderson to report for work at Harrisburg on Monday, October 20, 1980, to fill one of the positions pending the completion of the advertisement period. When he reported for duty at Harrisburg on Monday morning, he was advised by the Foreman in charge that his exercise of seniority at that time was untimely and in violation of the Agreement and would not be permitted. **Mr. Sanderson** immediately filed his name and address with Division Engineer Pope.

The Carrier contends that Mr. **Sanderson** did not, within 10 days from October 9, 1980, either exercise his seniority over a junior **employee** or take furlough by filing his name and address, in writing, with the Supervisor of Track as required by Rule 3-D-1, and as a result forfeited his seniority. The Carrier might be within the letter of the Agreement in regards to this position, however, it is not within the spirit of the Agreement in the context of the facts of this case. The claim before this Board is that Mr. **Sanderson** be returned to service with seniority and all other rights unimpaired. We shall sustain the Claim.

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

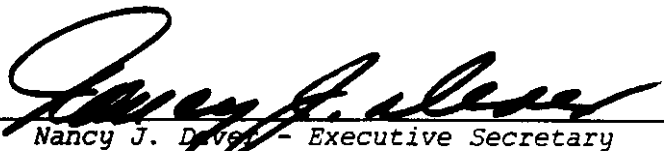
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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