

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26101
Docket Number CL-26316

John W. Gaines, Referee

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

PARTIES TO DISPUTE: (
(Fruit Growers Express Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9994) that:

1. The Fruit Growers Express Company arbitrarily violated Rules 3, 9, 17 and 21, among others of the agreement when it failed to award a relief position to Mr. J. J. Derer after Mr. Derer indicated that he desired to return from a sick leave of absence in his letter of September 16, 1983 and wished to displace a junior employe, D. Lloyd, on a 2-day Reliefman position at Philadelphia.

2. The Company shall now be required to compensate Mr. Derer an amount equal to what he could have earned had he been allowed to return to duty. This amount is to include but not be limited to his daily wages, overtime, had he been allowed to return as required under the Agreement."

OPINION OF BOARD: By letter to Carrier under date of September 16, 1983, Claimant, a Reliefman, gave notification of his ability and availability to return to work, and additionally gave notice of the exercise of his seniority rights to displace a junior employe from a relief position. Carrier declined the displacement by Claimant.

The most recent period of Claimant's working for Carrier had been for a term of two weeks through and including January 13, 1978. Claimant asserts personal illness, extensive indeed, to account for the five year hiatus.

For those five years, Carrier consistently carried Claimant on its annual Seniority Rosters, and later freely acknowledged that his seniority was being retained undisturbed. In two random instances Carrier made unsuccessful attempts to reach the Claimant. But, nothing eventuated to change the status quo from Claimant's seniority staying intact or to prevent Claimant from validly asserting that he be returned to duty for extra work.

We will award that Claimant be returned to active duty as Reliefman, with compensation for time lost from September 16, 1983, covering what he could have earned from daily wages, all computed at straight time.

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

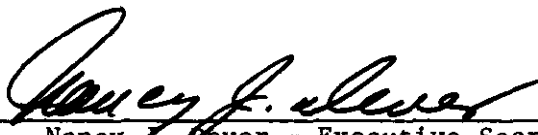
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1986.

