

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26125

Docket Number MW-25854

Referee Robert W. McAllister

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Burlington Northern Railroad Company  
(former St. Louis-San Francisco 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 Trackman D. E. Coffman to service December 5, 1982 through January 7, 1983 (System File B-1884/MWC 83-6-2A).

2. Trackman D. E. Coffman shall be allowed two hundred sixteen (216) hours of pay at the trackman's straight time rate and one hundred thirty-five and one-half (135 1/2) hours of pay at the trackman's time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant was assigned as a Trackman on Gang 112 at Pleasanton, Kansas. On November 22, 1982, he was laid off. His seniority date is February 17, 1979. The Claimant filed his name and address in accordance with Rule 78. On Sunday, December 5, 1982, the Foreman of Gang 189 was called and instructed to assemble his gang and report to Thayer, Missouri, for emergency service due to flooding. Foreman Martin was unable to contact all the gang members because it was Sunday. Apparently, Martin called three employees recently furloughed from his gang and for whom he had telephone numbers. The Organization contends Rule 79 was not complied with when these three employees were called to perform service because they all were junior to the Claimant.

The Carrier argues the burden of proving all the essential elements of the Claim rests with the Organization. It is offered that the Organization must point to clear and unmistakable language which requires the Claimant to be recalled from furlough to perform emergency work. According to the Carrier, there was no reestablishment of forces. Rather, the Carrier argues the circumstances were an emergency situation which does not constitute reestablishment of forces.

Both parties have raised arguments in their Submissions supposedly supported by asserted facts which were not included in the on-the-property handling. Rule 79 reads as follows:

"When forces are established, the senior employees who have complied with Rule 78 will be notified to report for duty."

This Board finds no exclusion to the clear and unambiguous language of Rule 79 which exempts the application of seniority by reason of emergency. Even if this were accepted for the initial emergency existing December 5, 1982, the Carrier has failed to show the emergency lasted from December 5, 1982, through January 7, 1983. The length of time the three junior trackmen worked suggests the Carrier had ample opportunity to comply with the specific language of Rule 79 after December 5, 1982. The argument advanced by the Carrier that Foreman Martin properly called former members of his gang on furlough ignores the plain language of Rule 79 which does not make reference to gang seniority. Whatever the subjective feelings of the Carrier, the Claimant's alleged failure to exercise his right to displace junior trackmen on Martin's gang on November 22, 1982, is not relevant. The Carrier admits the Claimant properly adhered to the procedures required by Rule 78 and preserved his rights of recall. Furthermore, as furloughed employees, the three junior trackmen were not members of Gang 189. Accordingly, the Carrier's argument relating to Foreman Martin's not having the Claimant's telephone number or any other information indicating he was interested in working overtime under Rule 57 (b) is not germane to the basic issue. Other than the initial emergency situation, the Carrier has shown no Agreement basis which justified its recall of three trackmen junior to the Claimant except for December 5, 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.