

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26171

Docket Number MW-26126

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Western Lines)

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

1. The Carrier violated the Agreement when it failed to recall furloughed Truck Driver/Crane Operator D. R. McCloud to fill a temporary vacancy as truck driver/crane operator at Brooklyn, Oregon November 15 through November 29, 1982, both dates inclusive (Carrier's File MofW 147-74).

2. Because of the aforesaid violation, Truck Driver/Crane Operator D. R. McCloud shall be allowed forty (40) hours of pay at the truck driver/crane operators' straight time rate."

OPINION OF BOARD: Claimant McCloud's seniority as a Truck Driver/Crane Operator dates to November 10, 1980, while employee Noah holds a seniority date of May 31, 1982, in the same district. Very shortly before the dispute arose both had been furloughed due to a reduction in force. Both filed their addresses with the Carrier pursuant to Rule 14 in order that:

"The employee shall have his name carried on the seniority roster, and shall be given preference in order of seniority to recall in accordance with the provisions of Rule 15"

On November 15, 1982, Carrier advertised the position of Truck Driver/Crane Operator located at Brooklyn, Oregon, a position vacated by employee McDaniel who had been awarded a similar position at Corvallis. The Carrier filled the Brooklyn position temporarily pending assignment from November 15 through 19 by using employee Noah. The Organization contends McCloud was entitled to the assignment by virtue of Rule 15 and claims pay for 40 hours on his behalf. Rule 15 states in pertinent part:

"Rule 15 - Recall to Service

Forces Increased - (a) Furloughed employees shall be called back to service in their seniority order and shall be so notified by registered or certified mail sent to their last address as recorded in compliance with Rule 14.

Employees shall return to service within ten (10) calendar days Failure to return to service as provided in this paragraph . . . shall result in forfeiture of seniority rights, and his employment shall be terminated.

Vacancies to be Filled - (b) New employees shall not be brought into service to fill new positions or vacancies in a class on a seniority district until employees in the service and furloughed employees in that class on that seniority district have been given an opportunity to take the positions."

The Organization maintains Carrier recalled a furloughed employee to fill the temporary vacancy and was obligated by Rule 15 to recall in seniority order.

Carrier contends use of Noah temporarily pending assignment pursuant to the bulletin did not constitute a Recall to Service under Rule 15. It argues furloughed employees are inactive with no right to bid on vacancies or displace until called back to service. Carrier states it nevertheless accepts offers from furloughed employees who express willingness to fill a temporary vacancy. According to Carrier when the November 15, 1982, bulletin was posted Noah volunteered to fill the position pending assignment. There were no available in service employees and Noah was allowed to fill the position from November 15 to 19 after which he returned to furlough status.

Carrier cites Rule 13(d) as allowing it to accept an offer by a furloughed employee to fill a temporary vacancy. That Rule states:

"Protecting Position or Vacancies - (d) An employee losing his position through force reduction, abolishment or displacement and unable to exercise seniority as provided in this rule, shall assume the status of a furloughed employee.

Furloughed employees and employees who have displaced in a lower class shall be considered available to protect positions and vacancies in all higher classes in which he holds seniority as provided in Rules 12 and 15."

Carrier argues that part of Rule 15(b) which gives furloughed employees preference over new hires would be unnecessary if the parties did not recognize employees in furlough status had no specific seniority standing for anything other than recall.

Carrier further points out Rule 15 provides furloughed employees are to return within ten days of recall. Thus, Carrier contends, it would be absurd to hold the Rule applies to an immediate five day temporary vacancy.

As part of its Ex Parte Submission the Organization reproduced a letter written by Claimant McLoud on January 6, 1983. Carrier asserts this was never shown it during the handling on the property. As it appears this document was not part of the handling of this Claim on the property we have, following well settled principles of this Board, disregarded it in our consideration.

Seniority rights are of obvious importance to employees and this Board is quick to vindicate these rights where they are abused or disregarded. Still it is obvious that seniority rights are created by, and are entirely dependent upon, the parties Agreement. Although the Organization relies upon Rule 15 this Board agrees with the Carrier that there was no recall to service within the meaning of the Rule here. The Rule, which requires notice by Registered Mail and allows a ten day period for reporting seems to have no reasonable application to a temporary five day vacancy. While this Board generally dislikes "logical conclusion" arguments we note that if Rule 15 did apply here Claimant could have been offered a 5 day temporary vacancy and could have forfeited his seniority rights and been terminated if he did not choose to accept it and report within the ten days. Surely Rule 15 does not mean that. This Board has frequently noted that it will not interpret Rules in a manner which leads to an unreasonable result. For these reasons, this Board finds Rule 15 does not apply. Our attention has not been directed to any other Rule which would have required a five day temporary vacancy to be offered to Claimant and therefore the Claim must be denied.

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

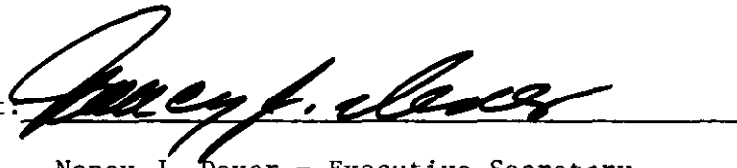
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.

