

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26262
Docket Number MW-26377

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

1. The Carrier violated the Agreement when it recalled furloughed **Trackmen** J. Allen, D. L. Sams, D. T. Forbes and R. M. Drewry, Jr. to permanent positions on Southern Region Rail Force 1201 effective March 5, 1984 and then furloughed them effective March 16, 1984 (System File C-TC-2263/MG-4571).

2. As a consequence of the aforesaid violation, **Trackmen** J. Allen, D. L. Sams, D. T. Forbes and R. M. Drewry, Jr. shall be compensated for all regular and overtime wage loss suffered beginning March 16, 1984 and continuing through April 3, 1984."

OPINION OF BOARD: On March 5, 1984, Claimants were recalled as Laborers on the Carrier's Southern Region Rail Gang, Force 1201. Nine (9) days later the Claimants were furloughed. On April 3, 1984, the Organization filed a Claim on behalf of the Claimants on the grounds that they should have been allowed to work thirty (30) days unless displaced. The Claim is for hours not worked between March 16, 1984, the effective date of the Claimants' furlough, and April 3, 1984.

At bar is the correct Interpretation of current Agreements Rule 5(c). This Rule reads, in pertinent part, as follows:

"When permanent vacancies or new positions are not filled by employees already in the service, cut-off men will be recalled to fill such positions in accordance with their seniority. The senior cut-off man must return within ten days after being notified, unless prevented by sickness or injury, and fill the permanent position or forfeit all seniority. Where cut-off employees desire to be used to perform temporary or extra work, they will notify the Manager-Engineering or other corresponding supervisory officer in writing accordingly. Men requesting temporary or extra work which may arise, will be recalled according to seniority, but if the senior man is not available at the time the work

arises, any man available may be used until the **senior** man is available. For laborer positions only men must respond for thirty days' work **or more** or forfeit seniority similar to the provisions of Rule 2(i)."

Study of this Rule does not persuade the Board that it places a requirement on the Carrier to work furloughed employees for thirty (30) days upon recall although the Rule does say that Laborers are required to return to service when there are thirty (30) days of work or **more** available, or forfeit seniority. Numerous Awards issued by the Board have **precedentially** established that the Board has no authority to add to nor subtract from Agreements.

The Board is charged with the Interpretation of Agreements as written (Third Division 20276, 20755, 21182). such precedent reasonably applies to the instant case and the Claim cannot be sustained.

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 **D**ivision

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 20th day of March 1987.