

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26284
Docket Number MW-25637

John B. LaRocco, Referee

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

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. P. Zwerk to service on October 4, 1982 (System File C-TC-1552/MG-3771).

(2) Because of the aforesaid violation, **Trackman** D. P. Zwerk shall be allowed one hundred twenty-eight (128) hours of pay at his straight-time rate and thirty-four (34) hours of pay at his time and one-half **rate**."

OPINION OF BOARD: Claimant, a Trackman, was furloughed from Supervisor Boone's territory (at Saginaw, Michigan) on September 10, 1982. He properly filed his name and address with the Carrier per Rules 5(b) and 13(a). Starting on October 4, 1982, the Carrier permitted a Trackman, who had not only been cut off at Saginaw but was also junior to Claimant, to perform extra work on an adjacent District at Vassar, Michigan. After Claimant complained, the Carrier called him to fill a temporary vacancy at Vassar on October 26, 1982.

The record reflects that the junior **Trackman** personally presented his cut off notice at Vassar and expressed a desire to be called for extra work beyond the boundaries of Supervisor Boone's District. Conversely, until October 26, 1982, Claimant had not informed the Carrier that he wished to be considered for filling **temporary vacancies at Vassar**. The record contains unrefuted evidence that, on the Northern Region, there was a" established practice of calling the most readily available **Trackman** to protect **temporary** work.

After **this dispute arose**, the parties amended Rule 5 so that seniority would determine which furloughed worker would **protect** extra work. The necessity for the revision, which is Rule 5(f), demonstrates that the Agreement did not previously provide for calling furloughed **employees** in seniority order **to fill temporary vacancies**.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

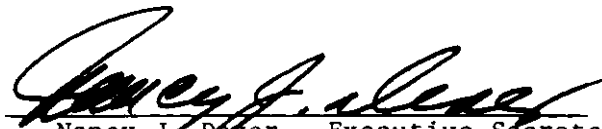
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.