

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26556

Docket Number MU-26188

Robert W. McAllister, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

1. The Carrier violated the Agreement when it failed and refused to permit **Trackman** A. V. **DeBrito** to displace junior **Trackman** W. M. Greene on the Special Projects Gang headquartered at Oak Island Yard, Oak Island, New Jersey (System Dockets CR-762 and CR-764).

2. As a consequence of the violation referred to in Part (1) hereof, Claimant A. V. **DeBrito** shall be allowed ninety-six (96) hours of pay at the applicable **trackman's** rate."

OPINION OF BOARD: This Claim originated as two separate grievances. **It** was consolidated on appeal to this Board. The first Claim started on December 21, 1979, when Claimant's position on a special projects **gang** was abolished. The Organization alleges that, on December 26, 1979, Claimant attempted to displace a junior employee, but was not allowed to do so because this individual **allegedly** did timekeeping duties, and Claimant was not a qualified timekeeper.

Between December 26, 1979, and January 22, 1980, the Organization discussed the matter with various Carrier Representatives. On January 22, 1980, the Claimant was permitted to make a displacement by mutual agreement. Two days later, he was displaced from the new assignment by a senior employee. This displacement caused the second Claim to be filed.

The second Claim alleged that Carrier, **in** violation of existing displacement Rules, permitted an employee returning from furlough to exercise seniority on the position being worked by the Claimant.

From our examination of this record, we are not persuaded that any Agreement violations occurred. On the matter of the first Claim, we note from review of the Joint Statement of **Agreed** Upon Facts prepared on the property and signed by the Organization that the Claimant was asked **to** displace on a assignment held by the junior employee, but he refused. The facts are:

"Claimant Abilio V. DeBrito was assigned as a Trackman, Special Projects, Oak Island prior to December 21, 1979. At the close of tour of duty on Friday, December 21, 1979, claimant's position was abolished pursuant to notice of December 13, 1979.

W. M. Greene, Timekeeper, was working at Waverly #2 between January 8, 1980 and January 21, 1980. Claimant had been called to work this assignment but refused. Claimant collected unemployment benefits under RUIA during this period."

On the matter of the second Claim, we note the individual that exercised displacement rights onto the position held by the Claimant on January 24, 1980, was not doing so from a furloughed status as contended, but was returning to duty from sick leave. Under these circumstances, a displacement was appropriate, and the Claimant's rights were not violated.

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 Employee involved in this dispute are respectively Carrier and Employee 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

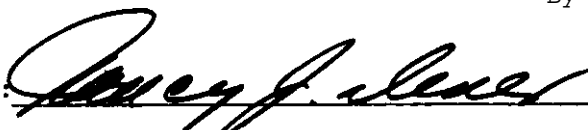
That the Agreement was not violated.

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 30th day of September 1987.