

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26567

THIRD DIVISION

Docket Number MU-25948

Eckehard **Muessig**, Referee

(Brotherhood of Maintenance of Way Employes
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 recalled junior **Track-**man D. **Crocker** instead of Mr. J. A. Mallory to fill a temporary vacancy on Raising Gang SE-832 at Casey, Illinois on April 15, 16, 19 and 20, 1982 (System Docket CR-77).

2. Because of the aforesaid violation, Mr. J. A. Mallory shall be allowed thirty-two (32) hours of pay at his straight time rate and eight (8) hours of pay at his time and one-half (1 1/2) rate for a total of three hundred ninety-five dollars and fifty-two cents (\$395.52)."

OPINION OF BOARD: This Claim came about because the Claimant states that a junior employee was returned to service before him, although he was available for work.

The Board finds in favor of the Organization based solely on the record developed on the property, primarily for the reasons that follow:

The Organization asserts in its letter of December 14, 1982, that both the Claimant and the junior employee were notified by identical recall letters dated April 12, 1982, to **return** to Gang TK-838 on April 28, 1982. The assertion was not rebutted by the Carrier **on** the property, although it had opportunity to do so. **Therefore**, it stands as stated.

Moreover, again as asserted by the Organization in the above-cited letter, the Claimant called the Carrier on April 16, 1982, to return to work after he learned that a junior employee had been returned to work. The Carrier, it is contended, told the Claimant that he could not return to work until April 21, 1982.

Give" the return to work date of April 28th cited in the April 12th recall letter, the Claimant had no **reason** to immediately respond to the April 12th letter, as implied in the Carrier's rejection letters dated August 6 and October 20, 1982, and April 19, 1983, but he should have been given the opportunity to respond immediately to service to fill the existing vacancy in lieu of the junior employee. Under these circumstances the Claim is 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.