

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri-Kansas-Texas Railroad Company

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

(1) The Agreement was violated when the Carrier recalled junior furloughed Laborer R. A. Moore instead of Mr. D. L. Baker to fill a laborer's position on Gang 201 in Kansas City, Missouri beginning June 2, 1986 (System File 200-138).

(2) As a consequence of the aforesaid violation, Mr. D. L. Baker shall be compensated for all wage loss suffered beginning June 2, 1986 and continuing until the violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute concerns the failure of the Carrier to recall the Claimant from furlough prior to recalling another employee whose name appears ahead of the Claimant on the seniority list, although both the Claimant and the other employee are shown to hold the same seniority date.

Article 3, Rule 13 of Agreement No. DP-357 makes reference to the seniority roster order in cases where employees are shown to have the same seniority date.

The record, however, shows dispute as to whether the other employee's seniority date is the same as Claimant's or, in fact, should be carried as an earlier date. There is also dispute as to the timeliness of challenge to the seniority rosters issued in 1984, 1985, and 1986.


This uncertainty as to the facts of the matter have led to irreconcilable differences between the parties' positions which the Board, in its appellate capacity, cannot resolve. Based on such differences, the Board is without sufficient factual information to take any action.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.