

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (United Steelworkers of America  
(  
(The Lake Terminal Railroad Company

STATEMENT OF CLAIM:

"Mr. Jesus Nieves is grieving the fact that the Company violated his seniority rights, specifically Rule 6: SENIORITY, when they (the company) unilaterally elected to furlough him (J.Nieves) and keep in service an employee junior to him (J.Nieves) in seniority. The junior employee held in service while Mr.J.Nieves is on furlough is Mr. I. Lowstetter, #261, Extra-foreman, in the Maintenance of way dept. Mr. J. Nieves #256 is a Burner in the Maintenance of way dept.

J. Nieves #256, Seniority date-2-12-73  
L. Lowstetter, #261 Seniority date-2-27-73

RULE 6: SENIORITY, Sections (c) and (f)1, reads as follows;  
'(c).The principal of seniority will operate only in case of promotions, vacations, furloughs and newly created jobs or positions, and in choice of vacation period.

(f). 1. Promotions, transfer, furloughs and recalls from furloughs shall be upon the basis of seniority.'

Mr. Nieves was furloughed on Sept. 23, 1988. Mr. Lowstetter continued working in the position of extra-foreman in the Maint.of Way Dept. The Unions position on the position of extra-foreman is that the person holding such position is still a bargaining unit, dues paying member of the Union and as such, shall be subject to all of the applicable rules of the Agreement between The Lake Terminal Rail Road Co. and the United Steelworkers of America.

Remedy Requested: Mr.Nieves be immediately re-instated from furlough and that he be compensated for all lost time (including overtime) in addition to all lost benefits.

In the event that Mr. Nieves is not immediately re-instated from furlough, that he be paid all monies lost and all lost benefits that he is kept on furlough."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant had been furloughed from his position as a Burner on September 23, 1988. His Claim is that another employee who was working as an Extra Foreman and who was junior to the Claimant should have been replaced by a more senior qualified employee. This sequence of actions would have permitted the Claimant to continue to work.


The Board has carefully reviewed the record and finds that the Claim must be denied. The Extra Foreman position is supervisory and is not a part of the bargaining unit. Therefore, it is not subject to the seniority provisions of the Contract. The Board also notes, in reaching this determination, that a similar dispute on this property involving the same parties and contractual language was settled in favor of the Carrier (Second Division Award 1351).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.