

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29998
Docket No. MW-29830
94-3-91-3-194

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the position of No. 1 Bridgeman on Bridge Gang 4102 was awarded to Laborer Driver R. L. Sanford on April 30, 1990 instead of recalling B&B employe S. E. Swaim (System File MW-90-38-CB/492-68-A).
- (2) As a consequence of the violation referred to in Part (1) hereof, Mr. S. E. Swaim:
 - (a) shall be allowed compensation in the amount equal to all time worked, both straight time and overtime, by junior employee Sanford, on a continuing basis,
 - (b) shall be placed on the No. 1 Bridgeman Seniority Roster with the roster date which he would have had absent the above violation and
 - (c) shall be allowed credit for all benefits including insurance."

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 employee 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.

At issue in this case is Carrier's decision to assign R.L. Sanford a Bridgeman #1 position in Gang 4102 in Athens, Texas. The Organization contends that the bid should have been awarded to Claimant. Claimant, who was furloughed, had held seniority in the B&B Subdepartment (since February 17, 1971) as a B&B Carpenter #1, B&B Carpenter #2, and Tinner Foreman, but not as a Bridgeman. Mr. Sanford, who was employed at the time of the bid and who also held no seniority as a Bridgeman, was not in the B&B Department. He had held seniority in the Track Department since May 14, 1981.

Carrier's rejection of the claim rested on a number of factors. First, it maintained that it would have recalled Claimant had he held seniority as a Bridgeman. Since he did not, it was not required to do so. It pointed out that it was beyond this Board's jurisdiction to award such seniority. The Organization contended that the question of whether Claimant held Bridgeman seniority was still to be decided in Docket MW-29008. The record, however, reveals that in Third Division Award 29352 the referenced docket, the Board concluded that "The Claimant does not contend that he held Bridgeman #1 seniority."

Carrier also suggested that there was a pyramiding of claims, since Claimant had filed two other claims seeking other assignments for the period August 1, 1988 and continuing and June 26, 1989 and continuing. We do not find this argument to be persuasive, since the claims do not involve the same position.

Carrier further argued that Claimant no longer held any seniority under the Agreement, because he had been furloughed since May 1986, and according to Article 3(g) of the Agreement (Force Reductions), he had been out of service a sufficient period so as to forfeit it. The Organization suggests that Carrier's failure to recall Claimant in August 1, 1988, caused this forfeiture. The record, however, is devoid of any evidence that this forfeiture came about as a result of Carrier's violation of the Agreement. Thus, Carrier's argument on this point is convincing.

Finally, Carrier also alleged that it and the Organization have always been in agreement that bids cannot be accepted from furloughed employees. That contention went unrefuted.

For all of the above-stated reasons, the claim must be denied.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.