Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30214
Docket No. MW-28560
94-3-88-3-393

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Seaboard System Railroad)

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

(1) The Agreement was violated when the Carrier assigned junior employe N. Rolle instead of Mr. W. R. Richardson to fill the foreman's position on Force 5T22 from June 15 through 19, 1987 (System File 5T21-87-73/12 [87-1040]).

(2) As a consequence of the aforesaid violation, Mr. W. R. Richardson shall be allowed forty (40) hours of pay at the section foreman's straight time rate."

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 employe 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.

On July 10, 1987, the Organization filed a claim for 40 hours pay at the Foreman's rate on behalf of Claimant, contending that Carrier violated Rule 13 during the period of June 15 through July 19, 1987, when it chose to elevate a junior Trackman to the temporary position of Foreman on Force 5T21 at Uceta Yard in Tampa, Florida. The Organization asserts that Claimant, who holds seniority as a Track Foreman and who was on furlough status at the time, should have been called for this work.

Carrier denied the claim, pointing out that the junior Trackman worked the Foreman's position on Inspection Force 5T22 on the dates in question, rather than as Foreman on 5T21 as alleged by the Organization. The Carrier also cited Rule 8, Section 2, of the Agreement, which provides:

> "Vacancies of seven (7) calendar days or less may be filled by using any eligible employee of the group and seniority district; however, preference will first be given to employees of the rank in which the vacancy exists, who may be out of work or working at a lower rank account reduction of forces.
>
> This section will not apply to temporary vacancies due to vacations provided for in the Vacation Agreement signed December 17, 1941."

Carrier contends that the vacation absence filled by the junior Trackman on the dates in question was a result of a Foreman's vacation on those dates. Accordingly, in view of the unambiguous language of Rule 8, Section 2, it was not necessary to recall Claimant from furlough for the disputed work.

In our review of the case, we concur at the outset with Carrier's contention that the Organization advanced new arguments and different contractual provisions which are at variance with the position it took during the handling of this dispute on the property. It is a basic tenet of the Railway Labor Act that the Board is unable to consider argument or evidence not included on the property. (Third Division Awards 28573 and 27328) Therefore, we will restrict our consideration of this case to the issues which were advanced prior to submission of the matter before the Board.

The Organization relied on Rule 13 in support of its contention that Claimant, and not an employee junior to the Claimant, should have been assigned to work as Foreman while the regular Foreman was on vacation. However, there is no language in Rule 13 that requires the Carrier to use furloughed employees to fill vacation absences such as that in dispute here. The provisions of Rule 13 make clear that Claimant, who elected to place himself on furlough status, could be returned to service only by bidding on an advertised position or by recall to service. Neither of those situations is applicable in the instant matter.

As Carrier correctly pointed out, short term vacancies of less than seven calendar days are governed by Rule 8 of the Agreement. Under that provision, Carrier is required to give preference to certain employees in filling temporary vacancies, but there is no obligation to follow the principles of seniority in filling temporary absences due to vacations. To the contrary, vacation absences are specifically excepted from the enumerated preference requirements.

Thus the Organization failed to prove that Carrier violated any Rule or Agreement provision by assigning an on-duty employee to fill in for a vacationing employee.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.