

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30519
Docket No. MW-29606
94-3-90-3-580

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, effective on or about June 19, 1989, the Carrier recalled and assigned junior employee Mr. Gray instead of Mr. J. Gatlin to fill a track laborer position (System File 1989-15/013-293-15).
- (2) As a consequence of the aforesaid violation, Mr. J. Gatlin shall be compensated for all wage and related benefit loss suffered beginning sixty (60) days retroactive from November 9, 1989 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 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.

Claimant commenced employment as a Switchman in the Transportation Department in April 1977, under an Agreement between Carrier and the United Transportation Union (UTU). As a result of a force reduction, Claimant's position was abolished, and Claimant was furloughed. In August 1981 Claimant accepted a position as a

Laborer in the Track Department, under an Agreement with the Brotherhood of Maintenance of Way Employees (hereinafter referred to as "Organization.") Subsequently, that position was also abolished, and Claimant returned to furlough status.

On October 2, 1987, while Claimant was still furloughed, Carrier sent a letter to him advising him to "pick up and sign for" a Terminal Railroad Association (TRRA) Rule Book. Claimant did not pick up the Rule Book by the date cited in the correspondence. Following an investigation in which Claimant asserted that he did not receive the letters, Carrier dismissed him for "insubordination." United Transportation Union protested Claimant's dismissal, which was subsequently reduced by Public Law Board No. 4529 to a suspension without pay and a conditional reinstatement effective October 16, 1989.

In the meantime, while Claimant was in discharged status, Carrier recalled furloughed Maintenance Department employees to service. Following Claimant's reinstatement by Public Law Board No. 4529, the Organization presented this claim for "...all time lost due to the Carrier not allowing Mr. Gatlin a letter of recall to report for duty on or around June 19, 1989, as they allowed younger employees other than Mr. Gatlin, who have been fully employed since letters of recall of June 19, 1989. Due to Mr. Gatlin being senior to Mr. Gray, and the employees hired on July 24, 1989, I will ask that Mr. Gatlin be allowed pay retroactive back sixty (60) days as Rule 42 Time Limits."

Carrier advised Organization that "...the claim does not meet the time limit requirements of Rule 42 of the controlling Agreement, and since you did not protest the January 1, 1988 Seniority Roster in accordance with Rule 18 of the Agreement, the subject claim is barred." Carrier further asserted that this dispute "has already been adjudicated, and the BMW attempt to re-adjudicate this dispute is nothing more than forum shopping for a better deal." The claim was progressed without resolution, and is now before this Board for adjudication.

A careful review of the record leads us to conclude that the instant claim must fail. On November 24, 1987, Claimant was dismissed, not just as a Switchman but as an employee, from Carrier service for failure to "pick up and sign for" the requisite Rule Book. The Organization's argument that Claimant's dismissal from service "as a switch person," had no effect upon his status as a "track person," is without merit. Claimant was discharged for insubordination while in furloughed status. The discharge was reduced to a suspension without pay but either way he was not in line for recall to service in June 1989. Additional support for

this conclusion is found in the failure of either Claimant or the Organization to protest his exclusion from 1988 and 1989 Maintenance Department seniority rosters. Based on the foregoing, this claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.