

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30527
Docket No. MW-30099
94-3-91-3-527

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 Employes
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Carrier violated the Agreement when, beginning on August 13, 1990, it assigned various members of Extra Gang No. 32 headquartered at Glidden with no seniority as a laborer driver to perform laborer driver duties instead of recalling and assigning Laborer Driver J. Franklin, Jr. thereto (System File MW-90-122/496-8-A SPE).
- (2) As a consequence of the aforesaid violation, Laborer Driver J. Franklin, Jr. shall be allowed four hundred ninety-six (496) hours' pay at his respective straight time rate for the Carrier's violation up to and including November 6, 1990 and continuing until the violation is stopped."

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.

This Claim is on behalf of an employee who had worked in the position of Laborer Driver in Extra Gang No. 32. The Claimant was furloughed from this position. The Organization seeks pay for the Claimant on the basis that he was not recalled to a Laborer Driver position as of August 13, 1990, at which time the Organization contends that Laborer Driver functions on Extra Gang No. 32 were being performed by other employees in the Gang. This is an arguably sound Claim, except for one consideration.

While on furlough, the Claimant sought and obtained a position in the Mechanical Department as a Fireman and Oiler, thus starting his seniority in that position as of November 21, 1988. At this point, there is no dispute that the Claimant also continued to hold seniority as a Laborer Driver. On May 10, 1990, the Carrier reached an Agreement with the Brotherhood of Firemen and Oilers to move certain mechanical work and employees (including the Claimant) from Houston to Sacramento.

According to the Carrier and without contradiction, the Claimant agreed to move to Sacramento and accepted \$13,000 in lieu of all moving allowances. After his last day of work at Houston on July 11, 1990, the Claimant failed to report for work at Sacramento.

Section D of the Memorandum of Agreement between the Carrier and the Firemen and Oilers reads as follows:

"(D) If an employee elects Options 2, 4 or 6 [as to lump sum allowances] of the above and does not report in his newly assigned work point within 30 days of accepting a lump sum allowance, the employee will be considered as having voluntarily resigned from the company unless prior arrangements have been completed with the Plant Manager at Sacramento."

When the Claimant failed to report at Sacramento, the Carrier wrote to him on September 10, 1990 stating in pertinent part as follows:

"You elected to voluntarily resign from the Carrier effective 8/30/90."

In the Carrier's view, the Claimant's failure to report made effective the self-invoking provision of the Memorandum of Agreement. The Organization argues that this provision does not apply to the Claimant's existing seniority status as a Laborer

Driver, regardless of its effect on his status as a Fireman and Oiler.

The Organization cites Third Division Award 25597 and Public Law Board No. 4370, Award 8. The Board finds the circumstances in these Awards distinguishable from the matter here under review, particularly as to the fact that the Claimant here accepted a lump sum payment and then failed to live up to the expectation of reporting to a new position.

In many instances, the termination of an employee's seniority on one roster does not disturb the employee's seniority status on another roster. Here, however, the Claimant was under the terms of the Memorandum of Agreement between the Carrier and the Firemen and Oilers. This agreement states clearly the status of an employee upon electing a lump sum and then not reporting at the new location. In this circumstance, the employee "will be considered as having voluntarily resigned from the company" (emphasis added). The Firemen and Oilers organization accepted this provision on behalf of its members. The Claimant, therefore, knew or should have known the consequences of electing a lump sum payment in place of moving expenses and then not moving to the new work location. He not only gave up his Firemen and Oilers seniority, he surrendered all rights to his employee status by effectively resigning "from the company."

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.