

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30677
Docket No. MW-28559
95-3-88-3-392

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 Employees
(
(CSX Transportation, Inc. (former
(Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior Trackman C.W. Fletcher instead of Trackman M.D. Jordan to fill a trackman's position on Force 6T18 on the Jacksonville-Tampa Seniority District on June 30, July 1, 2, 4, 6, 7, 8 and 9, 1987 [System File 37-SCL-87-50/12(87-943)Q].
- (2) As a consequence of the aforesaid violation, Trackman M.D. Jordan shall be allowed seventy-eight (78) hours of pay at the trackman'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 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 the time of the events giving rise to this dispute, Claimant, a Track Repairman, was on furlough status as a result of a force reduction. Claimant had been displaced on June 4, 1987. The Organization alleges that in recalling a Trackman junior to the Claimant to fill a temporary vacancy between June 30 and July 9,

1987, Carrier violated Rules 13 and 8 of the Agreement, which require that when temporary vacancies are not filled by employees in service, they are to be filled by the senior furloughed employee.

Carrier defended by asserting that Claimant failed to comply with Section 6, Paragraph A of Rule 13, which requires that furloughed employees who desire to retain their seniority rights must file their name and address in writing not later than 30 calendar days from the date of cut off. In addition, Carrier asserted on the property that Claimant had telephoned Carrier to inquire as to locations where he could work, but that when he was given several options, he declined generally the options posed, stating to Carrier's representative that he preferred to be near "his favorite fishing hole" with his family. In its Submission, however, Carrier changed its assertion, submitting now that the junior Trackman was allowed the temporary position after it had been specifically rejected by the Claimant.

Our close examination of the record in its entirety shows that there is no factual predicate for Carrier's assertion that Claimant specifically refused the position at issue. As noted above, Carrier merely asserted during the handling of this claim on the property that Claimant had rejected several options for work; there was no specific mention that he had refused the temporary Trackman vacancy which commenced on June 30.

We note, too, that the Organization emphatically refuted Carrier's assertion that Claimant turned down any options for work, stating that Claimant telephoned Carrier repeatedly looking for a position, and was ready to protect a position several hundred miles from his home, though it was subsequently claimed by a senior employee. The Organization submitted Claimant's telephone records as evidence of the efforts made by the Claimant to secure a position. On this record, we find that Carrier failed to prove that any action or inaction on the part of the Claimant jeopardized his right to the temporary assignment.

Carrier's other defense is similarly unpersuasive. There was a suggestion that Claimant failed to file his name and address within 30 days from the date of cut off, and therefor he forfeited his right to be recalled to service. However, it is undisputed that Claimant took two weeks vacation after his June 4, 1987 displacement and therefore his effective cut-off date was June 20, 1987. The claim dates fall well within the 30 calendar days Claimant was afforded under Rule 13 to file his name and address with the Carrier.

It was Carrier's responsibility to notify Claimant that he had the first right to the work in question. Carrier did not meet that obligation, nor did it provide any justifiable explanations for its failure to do so. We must sustain the claim.

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AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.