

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30840
Docket No. MW-30566
95-3-92-3-312

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

(1) The Agreement was violated when the Carrier gave Mr. G.R. Turner incorrect information concerning positions to which he could have exercised his displacement rights and thereafter assigned junior employees to the Claimant's seniority district to perform ditching work with the use of a Jordan Spreader from November 21 through December 31, 1990 instead of recalling and assigning the Claimant to perform said work [System File 12(3)(91)/12(91-470) LNR].

(2) As a consequence of the aforesaid violation, Mr. G.R. Turner shall be allowed eight (8) hours' pay at the applicable Jordan Spreader Operator's rate for each day the junior employees performed the work described in Part (1) above."

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 established and holds seniority on the Birmingham Northend Seniority District as a Machine Operator in the Maintenance of Way and Structures Department. On account of force reductions, he was furloughed awaiting recall to the Carrier's service on the date this dispute arose.

On November 21 through December 31, 1990, the Carrier required the routine track maintenance work of ditching to be performed using a Jordan Ditcher Spreader on the Birmingham Northend Seniority District. The Organization argues that instead of recalling and assigning the Claimant, who was senior, qualified and available, the Carrier assigned/transferred junior employees E.T. Holder, D.D. Wiggins and B.D. Barnett, whose seniority is confined to the South End Birmingham Seniority District, to perform the work in question.

The Division Engineer contended that:

"My investigation into the allegations made subject of your claim reveal the carrier has not violated any rule or provision of the working agreement. Mr. Turner has not complied with the provisions of rule 21(g). The carrier is under no obligation to notify any employee of system service rule 11 jobs on their seniority districts and you have not shown otherwise. Mr. Turner has the same opportunity as any other employee to roll onto the job, and if he wanted to work it, he should have exercised his seniority in accordance with the agreement. It is Mr. Turner's responsibility to exercise his seniority. In as much as you have failed to offer any evidence to support your claim, and my investigation did not reveal any violation of the agreement, I find your claim lacks merit as well as contractual support."

Rule 21(g) reads:

"21(g) When employees laid off by reason of force reduction desire to retain their seniority rights they must file their address, in writing, not later than 10 days from time cut off. This notice from the employee must be sent in duplicate to the Division Engineer, who will return one copy, receipted, to the employee. Periodic renewal of address is not thereafter required, but the employee is required to advise promptly in similar manner of any change in address. When his time comes for recall to the service, handling will be given in line with Rule 22(f). Employees protecting their seniority under this rule will not be required to renew their address because of being used on temporary or extra work."

The Organization relies upon a written statement by the Claimant asserting that he timely filed his name and address.

The Carrier declined the appeal by letter dated June 20, 1991 on the following grounds:

"The statement that you attached to the appeal of this claim was, in fact, received by the Division Engineer at Mobile, Alabama; however, it was not received until November 28, 1990 which was after the date the work in question began. In fact, it was not filled out until after this work had begun. The claimant, knowing that the position was available to him elected to file his name and address and furlough himself and, as such, is not entitled to the compensation sought. Therefore, the claim is declined in its entirety."

There is no showing in the record that the Claimant's statement had actually been furnished to the Carrier on a timely basis. The claim therefore must fail.

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 27th day of April 1995.