

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30979
Docket No. MW-30715
95-3-92-3-509

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recalled junior Track Laborer F. E. Flowers to fill a temporary position pending assignment beginning on February 1, 1991 instead of recalling Track Laborer K. D. Bryant. [System File KDB-91-25/12(91-376) SSY]
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Bryant shall be allowed one hundred twenty eight (128) hours' pay at his track laborer's pro rata rate of pay."

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 holds seniority as a Track Laborer in the Track Subdepartment dating from March 1973. F. E. Flowers also holds seniority as a Track Laborer in the Track Subdepartment. Prior to February 1, 1991 both Claimant and Mr. Flowers were furloughed from Carrier's service. It is not disputed that Claimant has greater

seniority than Mr. Flowers.

On January 28, 1991 Carrier issued Bulletin No. 29-03 advertising a new Trackman's position on Force 5F11, with headquarters at Yemassee, South Carolina. The closing date for said bulletin was February 17, 1991. Two bids were received for the new position, but the successful bidder, T.B. Warren, elected to accept a different position. Consequently, it was necessary for Carrier to readvertise the position at a later date.

According to the Carrier, shortly after the position was posted initially on January 28, 1991, Trackman Flowers, who lived at Yemassee, "requested" to work the new position while it was under bid. Carrier granted Mr. Flower's request and allowed him to work on the posted position until it was permanently filled. In the meantime, Claimant remained off on furlough until he was recalled to a different position on February 25, 1991.

On February 27, 1991, the Organization submitted a claim requesting "one hundred twenty-eight (128) pro-rata hours at the track laborer's rate of pay," alleging that Carrier had violated Agreement Rules 8 and 13 when Claimant, who was not recalled to work until February 25, 1991 and who is senior to Mr. Flowers, "was not recalled to service first." Carrier denied the claim on grounds that Trackman Flowers was "not recalled to work," but "simply requested to work the position until the job was awarded."

In April 1991, the Organization appealed the claim to Carrier's highest designated officer citing the mandate of Rule 8, Section 3, that "all temporary vacancies of more than seven (7) calendar days and less than thirty-one (31) calendar days' duration must be filled first, by using the senior employee of the rank and group on the district who has seniority in the rank in which the vacancy occurs." Additionally, the Organization pointed to Rule 13, Section 5, which provides that employees "temporarily out of service will be given opportunity to return to service in the order of their seniority to fill temporary vacancies or positions, as provided in Rule 8." The Organization asserted that the Rules are "clear and unambiguous," and that Claimant was the "senior furloughed employee and available for service."

Carrier replied on March 16, 1991, stating the following:

"I have reviewed your claim and initially note you state Mr. Bryant was recalled to work in the Savannah, GA area on April 25, 1991. As you well know, April 25, 1991, has not arrived as of this date. Secondly, Mr. Flowers was not recalled to work. Bulletin 29-03 was issued 01-28-

91. Mr. Flowers lives in Yemassee, SC, and requested to work the position until the job was awarded. For the reasons stated, I must respectfully deny your claim."

(In subsequent correspondence the Organization corrected its earlier assertion with regard to the date upon which Claimant was actually called back to service, which was February 25 rather than April 25, 1991).

The language, spirit and intent of Sections 1 and 3 of Rule 8 (Bulletining Vacancies and New Positions), and Section 5 of Rule 13 (Force Reduction), were violated when the "most senior available employee" was not afforded the opportunity to return to service first. If Carrier had need to fill the vacancy prior to award, Claimant had a right of preference over the junior furloughed employee. It is not disputed that Carrier did not contact the Claimant, but rather simply granted the junior employee's "request" to return to service. The Carrier did not question Claimant's availability, qualifications, or willingness to fill the vacancy at issue. The fact that Mr. Flower's "requested" to fill the temporary vacancy did not entitle him to fill the vacancy in preference to Claimant, nor does Mr. Flower's proximity to the work location mitigate Carrier's failure to recall the Claimant in seniority order. Based on the foregoing, this claim must be sustained.

AWARD

Claim sustained.

ORDER

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 25th day of July 1995.