Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31077
Docket No. MW-30641
95-3-92-3-415

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

1. The Agreement was violated when the Carrier failed to permit Machine Operator C. R. Carroll to displace junior employee J. P. Tomallo on the front-end loader operator position on the raising gang headquartered at Sewickley, Pennsylvania, which resulted in senior employee A. E. Long to be furloughed on November 5, 1990 [System Docket MW-1847].

2. As a consequence of the violated referred to in Part (1) above, Mr. A. E. Long shall be compensated for all wage loss suffered beginning November 5, 1990, and continuing."

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.

On November 1, 1990, the Carrier abolished the Class 2 Machine Operator position, displacing Machine Operator C. R. Carroll. Mr. Carroll, in turn, advised the Carrier of his intentions to displace the front-end loader position currently held by Trackman Tomallo. The Carrier denied Mr. Carroll's request on the grounds that that

particular position had also been abolished previously. Mr. Carroll then displaced Trackman Martinovich who, in turn, displaced the Claimant, Mr. A. E. Long, causing him to accept furlough status.

The Organization filed the instant claims, contending that "the most junior employe" should have been the one to accept furlough and not Claimant Long. The Organization filed the two claims, alleging that the Carrier violated the Agreement by not permitting Mr. Carroll to displace Mr. Tomallo as a machine operator, which would have precluded the Claimant's furlough.

This Board has reviewed the procedural argument raised by the Carrier, and we find it to be without merit. This case does not involve the pyramiding of two claims; and, therefore, the awards cited by the Carrier are inapposite.

With respect to the substantive issue, this Board has reviewed the record in this case; and we find that the Organization has not met its burden of proof that the Claimant's rights were violated when the Carrier did not allow senior Machine Operator C. R. Carroll to displace Trackman J. P. Tomallo from his job of operating the front-end loader at Sewickley, Pennsylvania. The Carrier has shown that the machine operator position on the front-end loader at Sewickley had been abolished prior to the date of the claim. The Carrier has also shown that Mr. Tomallo was operating the front-end loader on the date in question under Rule 19, which deals with temporary assignments. In other words, there was no position that would enable Machine Operator Carroll to displace Mr. Tomallo.

Mr. Carroll had no other machine operator position available in which he could displace a junior employee, so he consequently displaced Trackman Martinovich, who then displaced Claimant Long. This Board recognizes that Claimant Long had more seniority than Trackman Tomallo. However, there is no rule that requires the Carrier to displace a person from a temporary assignment such as the one that employee Tomallo was holding at the time of all of the activity involved in this case.

Although this Board is sympathetic to some of the issues raised by the Organization and recognizes that seniority is a valuable right to be protected, this Board cannot find that the Carrier violated any element of the Agreement. Therefore, the claim must be 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 1st day of September 1995.