

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31592
Docket No. MW-30807
96-3-92-3-636**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

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

- (1) The Carrier violated the Agreement when it assigned junior employe K. D. Gilliland to fill the position of welder helper at Dickson, Tennessee on January 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 30, 31 and February 1, 1991, instead of calling and assigning furloughed Welder Helper R. L. Simon in recognition of his superior seniority [System File 11(11)(91)/12(91-778) LNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. L. Simon shall be compensated eight (8) hours' pay at the welder helper's straight time rate for each of the afore-cited dates."**

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 dispute pivots on the application of the seniority provisions to two furloughed employees. The Parties premised their positions on Rule 21-Force Reduction and Rule 38-Welders' Special Rule.

R. Simon (Claimant) established and holds seniority as a Welder Helper. Prior to the time this dispute arose, Claimant's position was abolished due to a force reduction. Subsequent to Claimant's furlough, a temporary vacancy was created at Dickson, Tennessee, which Carrier ultimately filled by utilizing Welder Helper K. Gilliland, an employee junior to Claimant.

The Organization promptly presented a claim alleging:

"When Claimant was furloughed from the welding subdepartment, he filed his name and address in accordance with Rule 21. Also, Claimant made application for any extra work in the welding subdepartment on District 2, where he holds seniority."

The Organization also cited Rule 38(4) in support of its position:

"4. Welder Helper vacancies expected to be of 10 or more working days' duration:

First Choice – Senior qualified Welder Helper on the district where the vacancy occurs, who has made application."

Carrier denied the claim, maintaining that the Roadmaster attempted to contact individuals in "seniority order." According to the Roadmaster, when he attempted to contact Claimant, he received a recording stating that Claimant's telephone had been disconnected. Thus, Carrier maintains, the Roadmaster had "no choice" but to call the junior employee.

It should be noted that in addition to Rules 21 and 38 cited in the original claim, the Organization attempted to buttress its Submission to the Board with the addition of Rule 22-Return After Force Reduction. The applicable standard with regard to de novo evidence is so well settled in arbitral precedent on this Board that no citations are required for our lack of further discussion of Rule 22 in connection with this dispute.

Turning to the merits of this case, Claimant may have complied with Rule 21 at the time he was furloughed. However, Carrier presented unrefuted evidence that at the time when attempts were made to reach Claimant, his phone had been disconnected. Therefore, we must conclude that Carrier made reasonable but unsuccessful attempts to contact Claimant prior to awarding the position to the next employee. Based on the foregoing, this claim is 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 29th day of August 1996.