

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31598
Docket No. MW-30815
96-3-92-3-639**

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 Employes
(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. T. B. Barner incorrect or false information concerning recall and vacancies to which he could have exercised his displacement rights beginning February 20, 1991 [System File 12(16)(91)/12(91-821) LNR].
- (2) The Agreement was further violated when Mr. T. B. Barner's return to work physical was delayed as a result of the Carrier's failure to have the required forms available therefor.
- (3) The Agreement was further violated when, during the period which the Claimant was given the incorrect or false information and the delay in obtaining his return to work physical, the Carrier recalled junior employees J. W. Calvert and M. L. Curtis to service.
- (4) As a consequence of any or all of the aforesaid violations, Mr. T. B. Barner shall be compensated for all wage loss suffered from February 20 through March 22, 1991 as a result of the aforementioned Carrier's actions."

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 as a Machine Operator in the Track Subdepartment. Prior to the time of this dispute, Claimant was furloughed due to force reductions.

On February 19, 1991, Claimant received a phone call from Roadmaster Brown advising him to contact the Administrative Assistant to the Division Engineer with regard to vacancies on the Birmingham North End Seniority District. However, when Claimant did as he was instructed, he was advised that there was no available vacancy which his seniority would permit him to hold.

On February 27, Claimant again contacted Mr. Marshall, who advised Claimant to make an appointment for a return-to-work physical. Claimant completed the medical requirements on March 7, 1991, and was advised that he was medically qualified to return to work on March 25, 1991.

When Claimant returned to work, he learned that two junior employees had been recalled to service ahead of him. The Organization filed a claim alleging Carrier had violated Rules 5, 6 and 22 of the Agreement when it "misinformed" Claimant with regard to Roadmaster Brown's original phone call.

Carrier denied the claim premised on the following:

"Mr. Barner did call Mr. Brown several times requesting work, and he was instructed by Mr. Brown to contact the Division Engineer's office. Mr. Barner did talk to Mr. Marshall of this office and was informed there was no work available. Mr. Brown requested additional manpower to run a tamper, but was denied the request. Mr. Brown had no authorization to recall anyone.

The first position Claimant was eligible for became available on March 11, 1991, however, as a result of a disciplinary proceeding conducted on January 15, 1991, the Claimant was required to observe a ten (10) day suspension upon his return to service. After serving this suspension, the Claimant was returned to active service on March 25, 1991. Mr. Barner was determined to be medically qualified to return to service prior to March 25, 1991."

The Organization replied to Carrier's denial asserting that Claimant should have been notified to return to work on February 20, 1991, and begin his suspension on that same date. Therefore, if the ten day suspension was subtracted, Claimant is still entitled to compensation from March 6 to March 22, 1991, according to the Organization.

It has been the Organization's position that Claimant was entitled to return to service some time before March 25, 1991. In the original claim, it is alleged that Claimant should have been returned to work on February 20 and that two junior employees were recalled to positions before Claimant. Once the Division Engineer explained that Claimant was not qualified for the two positions awarded to the junior employees, and that Claimant was required to serve a ten day suspension, the Organization modified its position maintaining that Claimant should be compensated for the period March 6, to March 22, 1991.

Carrier effectively refuted each of the Organization's allegations with regard to this issue. As the moving party, the Organization bore the burden of providing sufficient evidence to the Board to support this claim. However, the Organization was not successful in that endeavor. Therefore, 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.