

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31618
Docket No. MW-31172
96-3-93-3-174**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
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 Pensacola Division Machine Operator T. G. Adams to operate a backhoe on the Mobile Division on September 25, 26, 27, 30, October 1, 2, 3, 4, 7 and 8, 1991, instead of assigning Mobile Division Backhoe Operator L. R. Hawkins [System File 14 (27) (91)/12 (92-130) LNR].

2. As a consequence of the violation referred to in Part (1) above, Mobile Division Backhoe Operator L. R. Hawkins shall be allowed eight (8) hours' pay at the backhoe operator's straight time rate of pay for each of the claim dates listed."

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.

It is undisputed that Carrier assigned an employee whose seniority was on the Pensacola Division, instead of recalling Claimant who was furloughed and whose seniority was on the Mobile Division. At issue is whether Claimant complied with Rule 21(g). Rule 21(g) provides:

"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."

Carrier maintains that Claimant failed to file his address in accordance with Rule 21(g). The Organization asserts that Claimant filed his address, that he has done so on numerous prior furloughs, and that he was subsequently recalled to service after the claim was filed. Assertions, however, are not evidence. The record contains no documentation or other evidence that Claimant filed his address in accordance with Rule 21(g) or even that he was recalled as asserted by the Organization. We also note that the Organization asserts that Claimant was recalled after the claim was filed. If this assertion is true, it is possible that Claimant's recall was occasioned by the filing of the claim, rather than by Claimant's filing his address in accordance with Rule 21(g). Because the Organization bears the burden of proof on this claim, it 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 29th day of August 1996.