

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31620  
Docket No. MW-31174  
96-3-93-3-176**

**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 Agreement was violated when the Carrier recalled/assigned junior employe W. J. Scott instead of Mr. S. Pears to fill a track repairman's position on Gang 5M01 at Montgomery, Alabama on August 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, September 2, (Holiday) 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1991 and continuing [System File 14 (28) (91)/12 (92-382) LNR].**

**2. The Agreement was violated when the Carrier recalled/assigned junior employe J. Gray, Jr. instead of Mr. S. Pears to fill a track repairman's position on Gangs 6M21 and 5M01 in the vicinity of Montgomery, Alabama on September 30, October 1, 2, 3, 4, 1991 and continuing [System File 14 (33) (91)/12 (92-129)].**

**3. As a consequence of the violation referenced to in Part (1) above, Mr. S. Pears shall be compensated eight (8) hours pay for each of the dates cited in Part (1) above and continuing at the track repairman's straight time rate of pay.**

**4. As a consequence of the violation referenced to in Part (2) above, Mr. S. Pears shall be compensated eight (8) hours pay for each of the dates cited in Part (2) above and continuing at the track repairman's straight time rate of pay and all overtime worked by junior employe J. Gray, Jr."**

**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 Claimant was furloughed and that he filed his address in accordance with Rule 21(g). The Organization contends that Carrier recalled from furlough a junior employee (J. W. Scott) ahead of Claimant S. Pears. Carrier maintains that it did not recall anyone from furlough. Rather, Carrier contends that the junior employee was working and continued to work when Claimant was furloughed, and that Claimant had the option to displace him, but failed to exercise it, choosing instead to be furloughed. Carrier contends that Claimant, who lived in Mobile, did not want to displace the junior employee because the position was not an expense position and Claimant could not afford to work in Montgomery under those conditions.

The Organization further contends that Carrier contacted Claimant Pears and asked if he was interested in the work outlined in Paragraph 2, supra. Claimant replied that he was interested, and Carrier advised Claimant that it had to contact other employees with greater seniority. Subsequently, Carrier advised Claimant that all positions were filled by employees with greater seniority but, according to the Organization, Carrier actually filled one of the positions with a junior employee (J. Gray, Jr.).

Carrier agrees that it contacted Claimant, that Claimant expressed interest in the work, and that it subsequently told Claimant that all the positions were filled by senior employees. Carrier, however, denies that it recalled the junior employee. Carrier maintains that the junior employee lived near the job site and showed up. When one of the senior employees failed to show up on time, Carrier allowed the junior employee to work.

The Board reviewed the record carefully. With respect to the claim set forth in Paragraph 1, supra, the Organization and Claimant assert that Claimant and the junior employee were furloughed at the same time. Assertions, however, are not evidence. Claimant submitted written statement indicating that he was prepared to work in Montgomery. This statement, however, does not establish that the junior employee was not working and subject to displacement by Claimant, had Claimant chosen to exercise his bumping rights. During handling on the property, it appears that the Organization was offered access to the junior employee's payroll record. However, there is no evidence that the junior employee was furloughed and recalled, as asserted by the Organization. Because the Organization bears the burden of proof on this claim, it must be denied.

With respect to the claim set forth in Paragraph 2, supra, the record similarly contains only assertions that the junior employee was recalled ahead of Claimant, rather than that senior employees were recalled, but the junior employee was allowed to work when he showed up at the job site and a senior employee failed to report. Accordingly, this claim also must be denied for lack of proof.

**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.**