

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31726
Docket No. MS-31449
96-3-92-3-698

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Does being called back to work under rule 2-A-1. (d) which states: Awards will be made within ten (10) calendar days after the close of the advertisement period to the senior bidder in the class. If there are no bids from employees who possess seniority in the class, Rule 3-B-2 will govern. Assignment to the position will be made within ten (10) calendar days following the date the position will be posted at the headquarters involved. A furloughed employee will be considered as having bid for any position or vacancy not requiring a change in residence. If he is the senior bidder in the case, the position will be awarded to him. If such employee fails to report for the position, within ten (10) calendar days, he shall forfeit his seniority in that class and in all higher classes, unless such position is expected to be of less than ninety (90) calendar days duration.

Being called back in this manner does it guarantee me ninety (90) days work?"

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 were given due notice of hearing thereon.

The Claimant herein was recalled from furlough, having been considered the senior bidder for a Maintainer position. He reported for duty on January 9, 1991, at which time he was advised that he would require safety orientation prior to commencing work. He was, nevertheless, paid for the day. Before he was able to undergo safety orientation, he was displaced from the Maintainer position by a more senior employee.

The Claimant argues that, having been recalled, he was entitled to at least 90 days' employment under the terms of Rule 2-A-1(d). However, the only reference to such employment is found in the final sentence of the cited Rule, reading as follows:

" . . . If such employee fails to report for the position, within ten (10) calendar days, he shall forfeit all seniority in that class and in all higher classes, unless such position is expected to be of less than ninety (90) days' duration."

This provision unambiguously permits a furloughed employee to decline a recall to a less-than-90-day position without the loss of seniority. It says nothing else. It is inapplicable here, since the Claimant did not decline the opportunity to return to work.

The claim also refers to Rule 2-C-1(b) which states in part:

"...The employee being displaced will not be affected until the end of the tour of duty on the day the displacement occurs."

The Claimant was paid for the day on which he was displaced (even if he did not actually work), so no remedy is required under this Rule.

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 25th day of September 1996.