

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

*See
8/22/91
10/1/91*

**Award No. 32369
Docket No. MW-31238
97-3-93-3-107**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 failed to allow Trackman J. C. Hall to exercise his displacement rights on the Eastern Kentucky Division beginning August 19, 1991 [System File 2(112)(91)/12(91-1691) LNR].**
- (2) As a consequence of the aforesaid violation, Mr. J. C. Hall shall 'Be paid 8 hours straight time from August 19, 1991 and continuous until claimant is allowed to return back to service at Track Repairman's rate of pay.'"**

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.

Claimant initially established seniority as a Track Repairman on October 3, 1988. As a seasonal employee he was subject to periodic layoff. On June 6, 1990 Claimant was mailed a recall notice to fill a vacancy on Extra Gang 5C80 at Hazard, Kentucky, effective Monday, June 11, 1990. Claimant did not respond to this notice. On August 19, 1991, Claimant attempted to displace a junior employee on the E.K. Division Tie and Rail Gang. He was not allowed to do so, on the contention that he had forfeited his seniority, as provided in Rule 22(f), when he failed to respond to the June 6, 1990 recall notice.

Rule 22(f) of the parties' Agreement provides:

"Employees will forfeit all seniority rights if they fail to return to work, or give satisfactory reason for not returning, within 10 calendar days from the date of notification by mail or telegraph sent to the address last given."

Rule 22(f) is a self-executing Rule. If an employee subject to recall fails to return to work, or give a satisfactory excuse for not doing so, acquired seniority will be forfeited. In this case Claimant ignored the recall notice. The literal application of the Rule requires that his seniority be forfeited.

The claim is without merit.

AWARD

Claim denied.

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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 30th day of December 1997.