Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32966
Docket No. SG-32962
98-3-96-3-354

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of M.S. McDaniel for payment of the difference between the Foreman's rate and the Maintainer's rate, payment of overtime at the Foreman's rate for all work performed on Fridays, and payment of additional travel expenses, beginning September 19, 1994 and continuing for the term of the violation, account Carrier violated the current Signalmen's Agreement, particularly Rule 3-G-1(c), when it allowed an employee returning from a supervisory position to displace the Claimant on September 19, 1994. Carrier's File No. SG-850. General Chairman's File No. RM2723-2-395. BRS File Case No. 9833-CR."

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.

As Third Party in Interest, the United Railway Supervisors Association was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

Claimant in this case was previously assigned to the position of Foreman. On September 19, 1994, Claimant was displaced from that position by employee L. R. Tilton, when he returned from a supervisory position and exercised his seniority over the Claimant. The Claimant then exercised his seniority by displacing onto a Maintainer position. The Organization filed a claim contesting Tilton's right to displace Claimant, because he returned voluntarily from his supervisory position. Carrier denied the claim, taking the position that Tilton's return to a non-supervisory position was involuntary, because he was permanently disqualified from the supervisory position he had previously held. Carrier's denial of the claim was appealed and subsequently progressed in the usual manner.

At issue in this case is application of Rule 3-G-1 of the Agreement between the Parties. That Rule reads in pertinent part as follows:

> "3-G-1. (a) Employees covered by this Agreement who have been or are hereafter appointed to a supervisory or non agreement position, shall retain previously acquired seniority in the seniority district from which appointed and shall continue to accumulate such seniority while occupying such a position.
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> * * *
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> (c) Employees who involuntarily return from appointed positions may, within five (5) working days, exercise seniority over any junior employee in the district in which they hold seniority. Employees returning voluntarily may only exercise seniority over the junior employee in the class from which promoted or a lower class."

The Board has reviewed the entire record and finds that the Claimant should not have been displaced by Mr. Tilton. The Carrier has argued that Mr. Tilton left his position "involuntarily," because he was removed from his supervisory position for

negligence in his performance of duties. It is apparent from the record, however, that although Mr. Tilton was entitled to a Hearing concerning his alleged negligence, he waived that Hearing and voluntarily left his supervisory position. Under the circumstances, Tilton's return from his supervisory position must be considered voluntary. Accordingly, he did not have the right to displace Claimant. There is no evidence that would support travel expenses in this case.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.