

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35567
Docket No. MW-33315
01-3-96-3-864**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned junior employe R. S. Anderson to fill the short vacancy of a section laborer on Section No. 765 at Stinson Yard on November 6 through 10, 1995, instead of calling and assigning Mr. D. W. Black in recognition of his superior seniority and in compliance with the provisions of Rule 14(b) (System File RI.056/8-00239).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D. W. Black shall be compensated ‘for the equivalent of forty hours (5dayx8hrs) at the pro rata rate and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.’”**

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 relevant and material facts giving rise to this dispute are not contested. It is not disputed that, following required contractual notice, the Claimant was placed in furlough status effective October 31, 1995. Nor is it disputed that two days later, on November 2, 1995, the Carrier's Personnel Specialist received and date stamped a handwritten note from the Claimant, dated November 1, 1995, stating: "I would like to get on Labor (sic) call list for Zone 8 Superior, WI. I also would like the bid sheets sent to me." Finally, it is not disputed that on November 3, 1995 the Personnel Specialist filled a short term Laborer vacancy at Stinson Yard for the period November 6 - 10, 1995, by calling an employee on the call list who was junior to the Claimant. [There was a collateral dispute concerning to what extent the Claimant opted to deer hunt rather than be available for call on various dates. For reasons explained infra, however, the deer hunting/availability controversy is irrelevant and immaterial with respect to the dates of November 6 - 10, 1995, which are the only dates of alleged violation at issue in this particular claim.]

In this claim, the Organization and Black allege a violation of his seniority rights under Rule 14 because he as not called ahead of the junior employee on November 3, 1995, to fill the short term vacancy from November 6 to November 10, 1995. However, the claim for alleged violation of Rule 14 is defeated by the express language of the last sentence of the fourth paragraph of Rule 14 (b), which reads as follows: "An employee who is furloughed may place himself on a call list within twenty (20) calendar days of the date reduced to furloughed status by providing not less than five (5) days advance written notice to the applicable Personnel Office." (Emphasis added)

In this case, it is not disputed that the Claimant's written notice was received on November 2, 1995, only one calendar day before the vacancy was filled on November 3, 1995, and four calendar days before the short term vacancy actually commenced on November 6, 1995. By the plain language of the quoted sentence, the Claimant was not entitled to be called off the call list for that particular vacancy.

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 24th day of July, 2001.