

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35956  
Docket No. MW-34600  
02-3-98-3-259

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Burlington Northern Santa Fe (former Colorado  
( and Southern Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recalled junior employee E. G. Hamman to fill a trackman position at Des Moines, New Mexico on February 13, 1997 instead of recalling senior Trackman F. Abeyta (System File C-97-08/MWD 97-06-06AA CSR).
- (2) As a consequence of the violations referred to in Part (1) above, Mr. F. Abeyta shall be compensated for all wage loss suffered at the applicable straight time and overtime rates beginning February 13, 1997 and continuing until the violation ceases.”

**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.

At the time of the incidents in question, Claimant F. Abeyta held seniority in the Maintenance of Way and Structure Department, Track Sub-Department, dating from March 12, 1992. The Claimant was in a furloughed status on the dates involved in this dispute.

The facts in this matter appear to be uncontested. On February 12, 1997, the Carrier recalled senior furloughed Trackman T. S. Cordova to immediately fill this vacancy. However, because he was unable to immediately report to his position, Mr. Cordova requested and was granted an extension in reporting to the Des Moines Section Gang.

Because help was needed immediately, the Carrier continued down the seniority roster in an attempt to secure additional furloughed employees to fill the vacancy on a temporary basis. Next on the list was furloughed employee R. B. Jackson whose phone number was not listed with the Carrier, followed by R. D. Gonzales whose telephone was disconnected. The Carrier then contacted the Claimant, but the call went unanswered. The next employee on the roster was E. G. Hamman who did answer his phone and agreed to report for work at Des Moines on the following day.

The Organization takes the position that the Carrier violated Rule 14 of the Agreement in this case. According to the Organization, the Carrier did not take sufficient steps to reach the Claimant. Its only contact attempt was the one phone call made to the Claimant, but the Organization contends that the Carrier was required to notify the Claimant via Registered or Certified Mail, Return Receipt Requested, or at least attempt another phone call. Finally, the Organization rejects the Carrier's contention that the last paragraph of Rule 14 applies here. That paragraph states:

**"Positions may be filled temporarily pending the return to service of a recalled employee by the senior employee holding seniority rights in the rank available without delay to the work."**

The Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the Organization's argument is factually incorrect. While the Organization claims that E. G. Hamman was recalled to the vacancy, the Carrier maintains that in actuality, T. S. Cordova was recalled to the Des Moines Trackman job. Hamman was in fact called to fill in temporarily until Cordova could arrive to fill the vacancy. Therefore, according to the Carrier, the Rules

of recall do not apply to the Claimant and it follows that it was appropriate to attempt to reach Hamman and others by telephone in seniority order. This is consistent with the spirit and intent of Rule 14 which requires that temporary employees be recalled so as not to delay the work. In this case, the Carrier stresses that individuals were needed immediately at Des Moines and if an employee was not readily available for work, it was appropriate for the Carrier to proceed down the seniority list. Thus, the Carrier contends that the claim should be denied.

After a review of the evidence, the Board finds that the Organization has not been able to sustain its burden of proof in this matter. The issue here is whether the Carrier acted appropriately when it attempted to notify junior employees by calling them on the telephone, rather than by sending certified letters in its attempt to temporarily fill the vacancy until Cordova was available. We find that in light of the temporary nature of the position, the Carrier acted appropriately by telephoning employees in seniority order until one was available for work.

We reject the Organization's contentions that the Carrier was required to send certified letters to the junior employees. In the case in which a carrier must fill a temporary vacancy, Rule 14 provides that "Positions may be filled temporarily pending the return to service of a recalled employee by the senior employee holding seniority rights in the rank available without delay to the work." It is uncontested that a recalled employee only has 15 days to return to his/her position. Thus, any temporary vacancy should not exceed 15 days. To expect a carrier to mail each junior employee a letter asking them to return during the period of a temporary vacancy and to await a response is clearly unreasonable. We believe that as long as the Carrier attempts notification by telephone, making sure that seniority is followed, such procedure is reasonable. Further, the fact that the Carrier only made one phone call to each employee does not negate the Carrier's efforts. Under the circumstances of this case, it is apparent that the temporary employee was needed as soon as possible. We note that it appears to be uncontested that the Carrier did attempt to reach the Claimant at least once (See Third Division Award 31928).

Based on the record in the instant case, we have found that the Carrier did not act inappropriately when it chose telephoning as the method of contact to inform the Claimant of a temporary vacancy. When the Claimant did not answer, the Carrier had the right to continue down the seniority roster and identify the next senior employee. The Claimant was treated properly and the claim is denied.

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**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 8th day of March, 2002.**