

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38357
Docket No. MW-37450
07-3-02-3-510

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to offer furloughed Trackman R. J. Schwiebert the work opportunity of filling a trackman vacancy on the Akron West Seniority District on April 16, 2001 through May 4, 2001 and instead assigned junior furloughed employee R. M. West [System File H41231401/12(01-0374) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant R. J. Schwiebert shall now be compensated for one hundred twelve (112) straight time hours at \$16.45 per hour, twenty-two (22) overtime hours at \$24.67 per hour, account of the aforementioned rules violations as well as this loss of work opportunity. Furthermore, you may consider this a time claim for fourteen (14) days to be counted toward his 2001 vacation qualifying time.”

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 this claim arose, Claimant R. J. Schwiebert held seniority as a Track Repairman in the Track Subdepartment on the Akron West District. He was on furlough status. Beginning April 16, 2001, the Carrier needed to fill a temporary Trackman vacancy on position 5PC-081. The vacancy was created by the incumbent of that position being out sick. The Carrier used junior furloughed employee R. M. West to work as a Trackman in that position.

On May 24, 2001, the Organization filed the above claim. It alleged that the Carrier had violated Rule 4 – Seniority and Rule 3 – Selection of Positions – at Section 4 (Filling Temporary Vacancies). Section 4 (a) of Rule 3 reads, in pertinent part, as follows:

“(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furloughed status.”

The claim was denied on July 13, 2001. The Carrier contended that the employee used to fill the position was the most senior furloughed employee who, prior to April 16, 2001, requested of the Roadmaster that he be allowed to fill the vacancy pending the bulletining of the position. In addition, the Carrier pointed out

that the Claimant did not contact the Roadmaster regarding filling vacancies until April 23 or 24 and at the time informed the Roadmaster that he would not be available for work until May 7, because he had to give his present employer two weeks notice before returning to the Carrier's service.

In its July 19, 2001 appeal, the Organization maintained that the Carrier's narration of the sequence of events was inaccurate and disputed the Carrier's assertion that the Claimant had notified the Roadmaster that he would not be available for work until May 7. The claim was conferenced on the property in September 2001. Following the claims conference, the Carrier confirmed its continued denial of the claim. In a November 28, 2001 letter to the Carrier, the Organization stated that it had attached a statement from the Claimant asserting that he was in fact available for service on April 16, 2001, "if notified." The Organization disputed the truth of the Roadmaster's assertion that he had been told by the Claimant that he could not return to work until May 7, 2001.

While the Organization retains the position that the Claimant was available for the temporary work at issue, the Carrier contends that it has no record of receiving the statement referred to in the Organization's November 28, 2001 letter and also denies having been presented with such a document at the conference.

There is no evidence in the record to suggest that the Roadmaster was other than truthful when he informed the Regional Engineer that the Claimant had told him he could only be available with two weeks notice to his then employer. Further, even if, for the sake of argument, the alleged statement by the Claimant regarding his availability was given to the Carrier at or after conferencing of the claim on the property, there is nothing in that statement to contradict the Roadmaster's report that the Claimant required two weeks' notice before he could report for duty. Rather, the letter, included in the Organization's Submission but not in the Carrier's, states only that the Claimant could have been available on April 16, 2001 "if notified." It does not specify that he could have left his other job immediately on that date. Accordingly, his statement does not contradict the Carrier's position.

In light of the foregoing, the Board finds no basis upon which to sustain the instant claim.

Form 1

Page 4

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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 5th day of September 2007.