

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39610
Docket No. MW-38211
09-3-NRAB-00003-040122
(04-3-122)

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 Carrier violated the Agreement when it reduced forces on Thermite Crew 2 and furloughed Mr. B. Rexine from a welder position on February 3, 2003, instead of junior employee T. Lucy (System File C-03-290-023/8-00219-092).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Rexine shall now be compensated at the applicable welder's rate of pay for all straight time and overtime worked by junior employee T. Lucy on the aforesaid crew beginning February 3, 2003 and continuing and he shall have all rights and benefits restored which were lost to him as a result of this 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 Claimant, a Welder at the time relevant to the instant claim, was assigned to a temporary vacancy on Thermite Crew 2. An employee junior to him was also assigned to a temporary vacancy on the same crew. During the time the Claimant worked on Thermite Crew 2, a Welder vacancy on that crew was bulletined to eligible employees and selected by K. Behrens. Behrens, working in Glenwood, Minnesota, was released from his old job and permitted to assume his new position on Thermite Crew 2. At the time of Behrens's move, the Claimant was furloughed and offered a position in Glenwood. T. Lucy, who is junior to the Claimant, remained on Thermite Crew 2.

The main question here is whether the Claimant, who is senior to the employee who was retained on the short vacancy position, should have been afforded the right to exercise his seniority to remain on Thermite Crew 2 with the junior employee being offered the Glenwood job.

The Agreement provides for displacement rights for employees in the circumstance presented here. Rule 12 (a) provides: "Employees affected by force reduction, abolishment, or displacement, will have the right to displace junior employees. . . ." If there were any doubt about those rights, Hugo clearly acknowledged that "... Jon Johnson did not tell me all the details on this or I would have informed him to release Tom Lucy instead of Brad Rexine from the crew. . . ." In short, Rexine should have been given the opportunity to remain on Thermite Crew 2 and Lucy offered the Glenwood job. The Carrier's failure to do so violated the Agreement.

As for remedy, the Claimant is not entitled to relief. The "comply and grieve" rule is a bedrock labor relations principle that operates to deny relief to an individual who engages in self-help, even where there is an otherwise clear contract violation. In the instant case, the Claimant, by his own admission, refused a work assignment offered to him. In his statement dated March 14, 2003, the Claimant wrote "... road master Jon Johnson told me that I have to go to Glenwood

February 3, 2003 and fill in for the welder position [at] Glenwood . . . I said I would not go. . . .” The Claimant also failed or refused to respond to Hugo’s calls.

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 1st day of April 2009.