

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22072
Docket Number MW-22129

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
that:

(1) The Agreement was violated when, on October 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1975, it used Roadway Machine Operator Curtis Jackson to perform trackman's duties on T&S Gang No. 9059 and Section Force No. 6556 at Seville, Florida instead of calling and using furloughed Trackman Frank T. Coleman for such service [System File 12-13(76-12) J37].

(2) As a consequence of the above-stated violation, Trackman Frank T. Coleman shall now be allowed eighty (80) hours' pay at his straight-time rate and five (5) hours' pay at his time and one-half rate.

OPINION OF BOARD: On the claim dates Claimant was a furloughed trackman holding seniority in the Maintenance of Way track subdepartment in the Jacksonville-Tampa seniority District.

The Claimant alleges that on the claim dates trackman's work for which he should have been recalled was performed by one not holding seniority in the track subdepartment.

At the outset the Carrier defends on the grounds that the Claimant failed to file his name and address with Carrier within 30 days from date cut off as required by Section 6 of Rule 13. The Organization takes the position that there was in existence at the time a verbal agreement between the parties waiving Section 6 of Rule 13. The Carrier takes the position that the verbal understanding was only that failure to comply would not "cause automatic forfeiture of seniority and employment relationship with the company" and that it did not impose an affirmative duty on the Carrier to locate the names and addresses of furloughed employees to offer them work as it arose.

We are somewhat perplexed by the Carrier's argument. If the rule was waived as to the filing of the names and addresses it follows that the seniority of the employees remains intact with all rights

attendant to that seniority. The Carrier argues that the waiver only resulted in relieving the employe from the penalty of the loss of seniority. If seniority is not lost the Claimant has a right to be recalled for work that should properly be assigned to him.

This dispute arose when a Burro Crane had to be taken out of service for repairs and the crane operator was instructed to report to the T&S and Section Force to assist them while the crane was being repaired. The Carrier stresses the fact that no vacancy existed at the time and that the work that was performed would have been absorbed by the existing gang members.

The issue to be determined in this matter is what kind of work was performed by the Crane Operator. The fact that the work would have been absorbed by the existing gang has no bearing on the case. The work in question was work belonging to those holding seniority rights in the track subdepartment. When Carrier adds to its force to perform the work it must do so in accordance with the established seniority system.

The Carrier argues that its intention in the instant case was merely to save the crane operator from being furloughed. While the Carrier's good intentions are to be applauded the Carrier is still bound by the terms of its collective bargaining Agreement. The assignment of work belonging to employes holding seniority in the track subdepartment to one not holding such seniority is violative of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.