

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22165
Docket Number CL-22296

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8497) that:

1. Carrier violated the effective Clerks' Agreement when it failed to return furloughed employee J. D. Reid to service effective August 23, 1976 in accordance with his seniority rights.

2. The Carrier shall now compensate Mr. J. D. Reid for eight (8) hours' pay at the pro rata rate of Position No. G. T. 1175-R commencing with August 23, 1976 and continuing each and every Saturday through Wednesday thereafter that a like violation occurs.

OPINION OF BOARD: Claimant J. D. Reid, with a seniority date of September 12, 1973, ranked No. 259 on the roster for Seniority District No. 4. Another employee, C. L. Carter, with a seniority date of April 1, 1974, ranked No. 263 on the same roster. Both Reid and Carter were on furlough status on August 23, 1976, the date this dispute arose due to the Carrier issuing Bulletin No. 283-A awarding Position No. G. T. 1175-R to Carter as the "Senior Furloughed Employee." The Organization argues that Reid, being senior to Carter, should have been awarded the position under the provisions of Rule 19(g) reading:

"When forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority rights. Such employees, when available shall be called in seniority order for all extra work, short vacancies or vacancies occasioned by the filling of positions pending assignment by bulletining which are not filled by employees' voluntary rearrangement of regular forces.

"When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee who has protected his seniority as provided in this rule, the senior furloughed employee shall be called and assigned to the position. Furloughed employees failing to return to service within seven (7) calendar days after being notified (by certified or registered mail, return receipt requested, sent to the address last given) or give satisfactory reason for not doing so will be considered as out of the service."

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The Carrier does not dispute the fact that Carter was junior to Reid when Position No. G.T. 1175-R was awarded on August 23, 1976, nor that both Reid and Carter were then, in fact, furloughed employees subject to the provisions of Rule 19(g). Carrier contends, however, that through error or inadvertence Reid was shown in its records as an active employee at that time, advancing considerable argument on the cause therefor. Carrier attempts to assign responsibility for the error to several factors, including Reid's actions in exercising various options available to furloughed employees at the time he first became furloughed, and subsequently. Carrier's arguments on responsibility for the error are not persuasive, nor are we convinced that Reid's furlough and subsequent exercise of waivers to protect short vacancies, etc., permitted under the applicable language of the rule, was unique or different from the norm. We fail to see how Reid's conduct contributed to Carrier's basic error in showing him actively employed at times he was, in fact, furloughed and, thus, it was Carrier which was responsible for Carter being recalled ahead of Claimant Reid.

Carrier also raises two issues with respect to the parties' time limit rule in defense of payment of the claim: (1) that it was somehow unusual or improper for the general chairman to file the claim at the initial level, which argument was abandoned in later handling; and (2) a tortured rationale, not vigorously pursued, that, because some 16 months earlier, on or about April 1, 1975, another junior employee was similarly recalled to service around claimant, the time limits commenced running. Thus, Carrier reasons, the failure to file claim for the April 1, 1975 "violation" bars consideration of the instant claim. We do not view the parties' time limits agreement as operating in this fashion. In our judgment, each recall of an employee junior to claimant during his lengthy period of furlough is a separate

and distinct agreement violation and the failure, on a timely basis, to prosecute a claim on a prior recall to service violation, regardless of the reason, cannot be used to defeat a valid claim on a subsequent similar violation. Thus, we will reject this and the other time limit arguments raised by the Carrier.

The claim will be sustained for eight hours' pay at the pro rata rate of Position G.T. 1175-R for each day commencing August 23, 1976, that an employee junior to Claimant was worked on that position until such time as claimant is, or was, returned to service.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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