

## THIRD DIVISION

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( Escanaba and Lake Superior Railroad Company

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Trackmen R. Woods, M. Wilcoxon, J. Walling, B. Anderson, R. Myllymaki, J. Hedler, F. Barron, J. Latvis, S. Trudeau, C. Ahlskog, W. Latvis, S. Mortomaki, K. Lykins, P. Connolly, B. Deno, L. Taylor, M. Berandt, D. Latvis, M. Nevins and D. Bolander to service on May 27, 1981 to perform service in connection with a derailment in the vicinity of Northland, Michigan (System File ELS 1992).

(2) The claim as presented by Assistant General Chairman F. M. Larson on June 12, 1981 to Director Field Operations W. F. Drusch shall be allowed as presented because said claim was not disallowed by Director Field Operations W. F. Drusch in accordance with Rule 52(a).

(3) As a consequence of either or both (1) and/or (2) above, the claimants shall

"each be allowed an equal proportionate share of the 320 hours of straight time rate and 40 hours at time and one-half rate of pay".

OPINION OF BOARD: On May 27, 1981 a derailment occurred at Milepost 39, near Northland, Michigan. Carrier hired twenty Trackmen to perform the needed work on May 28 and May 29. As a result of Carrier's action, the Organization filed this claim, contending that Claimants, furloughed Trackmen with greater seniority than those hired, should have been used to repair the tracks. When the parties were unable to resolve the dispute on the property, it was appealed to this Board for adjudication.

The Organization maintains that Rule 13 supports its position here. That rule reads, in relevant part:

"Rule 13 - Increase in Force

(a) When forces are increased, senior laid off employees in the respective ranks must be given preference in employment.

(b) New men shall not be assigned to work to the exclusion of regular men who may be laid off on account of force reductions provided such regular men are available when needed."

In the Organization's view, Rule 13 requires that furloughed employees be employed prior to the hiring of any new workers. Thus, it concludes that Carrier clearly violated Rule 13 by not employing Claimants to repair the tracks near Northland, Michigan in May 1981. Accordingly, the Organization asks that the claim be sustained.

Carrier, on the other hand, contends that the claim should be rejected for several reasons. First, Carrier argues that the Organization is guilty of laches in not promptly processing the claim. In Carrier's view, the claim should fail on this ground alone.

As to the merits, Carrier asserts that Claimants have not complied with Rules 10 and 12 of the Agreement and have thus invalidated their right to the disputed work. Those rules read, in relevant part:

"Rule 10 - Retaining Seniority

(a) When an employee laid off in force reduction desires to retain his seniority rights without displacing a junior employee, he must, within ten (10) days, file his name and address in writing with the Roadmaster or other corresponding officer, with copy to the General Chairman."

"Rule 12 - Use of Furloughed Employees

2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier, in writing, with copy to the local chairman, that they will be available and desire to be used for such work..."

Carrier insists that Claimants did not submit their names and addresses as required by Rule 10; nor did they notify Carrier of their availability for work in accordance with Rule 12. Therefore, Carrier concludes that Claimants are not entitled to perform the work which might otherwise arise as a result of that notification. Accordingly, Carrier asks that the claim be rejected on its merits, as well as on procedural grounds.

A review of the record evidence convinces us that the claim must be sustained. This is so for a number of reasons.

First, we do not believe that the Organization is guilty of laches. That concept serves to defeat a claim if the presenting party has failed to expeditiously handle it, to the detriment of the other party. Here, any delay in handling the claim did not prejudice Carrier. Thus, the claim cannot be dismissed on the basis of laches.

As to the merits, Carrier, contended that Claimants failed to provide their names and addresses and other notification pursuant to Rules 10 and 12. Such a defense could, if proven, result in the rejection of the claim. However, the record evidence reveals that this defense was not raised on the property. It is axiomatic in railroad labor relations that all arguments be addressed on the property. This is done so as to afford the parties opportunity to fully debate and resolve the issues at the lowest level possible. Failure to raise an issue on the property bars that party from raising it before this Board.

Accordingly, without such defense by Carrier, the record amply supports the Organization's position that Claimants provided proper notification in accordance with Rules 10 and 12. Therefore, the claim must be sustained as presented.

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:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.