

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25465  
Docket Number CL-25391

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and Steamship Clerks  
( Freight Handlers, Express and Station Employes  
PARTIES TO DISPUTE: (  
(The Denver & Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9838)  
that:

1. Carrier violated Rules 11(e)(t)(u), 16(g) and other related rules of the Agreement, when on September 1, 1982, it called back Ms. V. Bargas, junior employe, to the north yard extra board instead of Ms. S. Munoz, senior employe.

2. Carrier will now be required to pay (at pro-rata) Ms. Munoz guarantee, per Rule 11(e), from September 1, 1982, to continue until this claim is resolved, or until such time she would have been cut from the extra board.

OPINION OF BOARD: Claimant was furloughed from the position of Calculating Machine Operator as of August 6, 1982, but was permitted to fill a vacation vacancy the following week from August 9 to August 13, 1982. Upon her being furloughed, the Claimant gave timely notification to the Carrier of her availability for the North Yard Extra Board. At that time, since there was no one junior to her on the Extra Board, she was also furloughed from the Extra Board.

Short-term vacancies occurred for September 1-9 and September 23-28, 1982, and an Employe junior to the Claimant was recalled from furlough to fill these vacancies. The Carrier stated that it bypassed the Claimant in favor of the junior Employe because the latter was qualified to perform the variety of assignments in the short-term vacancies, while the Claimant was not qualified.

The Organization relies on Rule 16, Reducing Forces, which reads in pertinent part as follows:

"(g) Furloughed employees shall be returned and required to return to service in the order of their seniority rights."

The Carrier, however, states that a "qualified" employee was required for the short vacancies and, in defense of its right for such qualification, points to Rule 11, which provides:

"(a) All employes not holding a regular assignment will be designated as an unassigned employe.

(b) Unassigned employes will be placed on the Extra Board established for the district to the extent that their services can be utilized."

The Carrier argues that the Claimant, in her furloughed status, was an "unassigned" employee and her lack of qualification meant that she could not be "Utilized" for the short vacancies.

Rule 16(g) is, however, clear, precise and without exception. It states that furloughed employees shall be returned in the order of their seniority. If there were to be exceptions as to qualification, such would necessarily be contained in that rule. Rule 11(b) is somewhat less precise in that it concerns only whether an employee can be "utilized". Put another way, Rule 16(g) does not specify recall by seniority and qualification. It simply states, as applicable here, that the Claimant was entitled to be offered recall prior to a junior employee.

Claimant shall receive compensation for all time worked by the junior Employee in September, 1982.

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

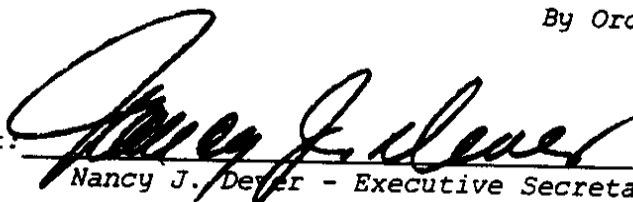
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.