

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25983
Docket Number MW-25344

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)

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

(1) The Carrier violated the Agreement when it failed to allow Trackman T. McCartney to fill a vacancy on Tie Gang G-732 headquartered at Bryn Mawr on the Paoli Subdivision on October 13, 14, 15, 16, 19, 20, 21, 22, 23 and 26, 1981 (System Docket 338).

(2) Because of the aforesaid violation, T. McCartney shall be allowed ten (10) days of pay at the applicable trackman's rate."

OPINION OF BOARD: On October 13, 1981, prior to the start of his tour Claimant McCartney was displaced from his position in the Paoli Subdivision by a senior Trackman. On October 21, 1981, he signed a furlough form.

On October 27, 1981, he wrote the Carrier stating he learned the gang contained three vacancies "none of which I was allowed to work the day I was bumped" and that two Trackmen with less time were working. Also "Upon this discovery I immediately contacted Peter Adomovich at the Paoli Track Office who confirmed..." this information. He also stated that on October 27, 1981, he sought with permission from Supervisor Brenneman to bump the junior men but they were displaced by senior Trackmen before he could do so. He concluded he had unfairly lost ten days pay and requested an investigation.

On November 16, 1981, the Carrier acknowledged receipt of the letter "wherein you claimed unjust treatment" and advised that on October 13, 1981, "there were junior employees working ... who you could have bumped." The Carrier denied obligation to compensate McCartney "as you elected to not displace available junior employees ... and then elected to take voluntary furlough ... when there were still junior employees holding positions"

On December 8, 1981, the Organization filed a claim alleging McCartney had been told by Foreman Shank and Supervisor Brenneman there were no positions he could bump. It also contended Claimant was refused assistance by supervision at Paoli Track Headquarters and at Penn Coach Yard when he sought to locate junior employees.

In its denial of the claim on February 16, 1982, the Carrier quoted Force Reduction and Furlough Procedures it had promulgated in 1980 noting displacements must be made at the start of a tour. It took the position there was no evidence Claimant conversed with any Foreman or Supervisor when he went to Penn Coach Yard and noted there was no explanation of any action Claimant took "on other than the 2 or 3 days mentioned in your submission".

The Carrier argues allegations that Claimant was thwarted in locating junior employees are unsupported by evidence, and that the claim differs significantly from Claimant's original letter and has been improperly expanded.

There is merit to the Carrier's position that the Organization's assertions regarding certain visits being made and questions being asked are not evidence. But we do consider written statements from Claimant as evidence which, if un rebutted, can be considered probative. In his original Submission Claimant referred to vacancies "none of which I was allowed to work the day I was bumped" and stated "Two trackmen with less time than I, were working" These statements are un rebutted and, really, admitted. While the statement does not report exactly what Claimant asked the Foreman, it certainly implies he sought to work one of these positions and clearly asserts he was not "allowed" to do so. Nor does the Carrier deny Claimant contacted Adomovich or Brenneman as he says he did. In view of these un rebutted statements we cannot conclude Claimant's loss was due to his lack of initiative or a predilection to take a voluntary furlough. Under Rule 18(a) Claimant was required to complete the furlough form or forfeit his seniority. His actions between the date on which he was replaced and on which he completed the form were sufficient to put the Carrier on notice that he was interested in replacing a junior employee. Assuming without deciding Claimant had a responsibility to "search out junior employees" we think the evidence shows he made a sufficient search here. We will also note that we have kept in mind the distinction between bumping a junior employee and bidding on a vacancy in our consideration of this claim.

We disagree that this claim was not handled in the "usual manner" and should therefore be dismissed. Though the Carrier now describes Claimant's October 27, 1981, letter was "simply a request for ... investigation" that letter clearly complains of a loss of ten days pay and Carrier's response refers to "Claimed unjust treatment" and states "your claim is without merit and hereby denied". We find no indication the claim has since been fatally enlarged.

The Carrier argues that in no event should the claim for October 13, 1981, be granted since it is required that all displacements will be handled prior to starting time of the tour. But that would of course mean that it was before the tour started that Claimant was replaced and in turn first sought to displace junior employees by speaking to the Foreman.

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

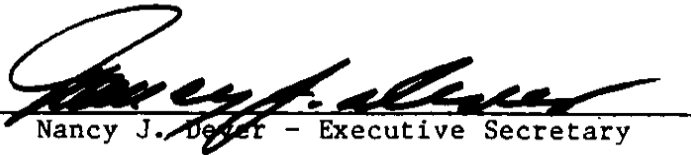
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.