

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(National Railroad Passenger Corporation - (Amtrak)  
Northeast Corridor

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Trackman V. Phillips to service January 25 through February 25, 1984 (System File NEC-BMWE-SD-920).

(2) Because of the aforesaid violation, furloughed Trackman V. Phillips shall be allowed one hundred eighty-four (184) hours of pay at the trackman's straight time rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In the instant case, the Organization argues that the Carrier violated the applicable Rule by failing to assign the Claimant to a newly created Trackman's position. Claimant was furloughed and the senior qualified employee. The Organization claims violation from January 25 through February 25, 1984, of Rule 20(a) which states in part:

"When the number of trackmen in a gang is increased, furloughed trackmen previously employed in such gang, who have complied with Rule 18, will be recalled for service in such gang in seniority order."

As to the Trackman position and the facts of this case the parties are in complete disagreement. Throughout the case on the property the Organization claimed that the Carrier increased the number of Trackmen when they disqualified another employee as Engineer Work Equipment Operator and assigned him a Trackman's position on Gang Y-232. The Organization argues that the Carrier is restricted by Rule 20 to such assignment by seniority order. Claimant having had seniority was not recalled in violation thereof.

The Carrier argues that the employee assigned worked the position as a result of disciplinary proceedings in his same gang and no additional force increase occurred. The Carrier states for the record that it did not create a new position, nor did it increase the force.

In the instant case this Board is faced with interpreting Rule 20. We read that Rule as violated by the Carrier when it permitted a junior employee to work the position of Trackman. Carrier's arguments that this did not constitute an increase in the force or a new position miss the mark. The Rule restricts Carrier "when the number of trackmen in a gang is increased" which are the facts at bar. Nothing in the Agreement language permits Carrier's action. An employee doing the work of a Trackman is doing the work of a position to which seniority rights accrue. There is no denial on the property that Claimant was the senior qualified applicant and, therefore, denied his rights to recall in violation of the Rule. This Board finds that other ex parte arguments presented by the Carrier come too late for consideration.


As to the appropriate remedy, the Carrier did argue on the property that the requested compensation was excessive. Carrier argued that Claimant's records indicated that he did not file his furlough papers until February 21, 1984, and was therefore not eligible for the relief requested. Having found a violation and dispute over compensation, we will sustain the claim, but direct the Carrier and Organization to consult the work records to determine the basis of payment. Payment to the Claimant should be based on a joint review of the Carrier's records to determine the actual number of workdays due the Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.