

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28222
Docket No. MW-28346
89-3-88-3-100

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

(1) The Agreement was violated when junior Trackman E. Martinez, instead of senior Trackman L. King, was recalled from furlough effective April 21, 1986 (System File TJ-6-86/UM-11-86).

(2) As a consequence of the aforesaid violation, Mr. L. King shall be allowed eight (8) hours of pay at the trackman rate for each work day and holiday beginning April 21, 1986 and continuing until the violation is corrected."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant was a furloughed Trackman at the time of the Claim. Employees were called back from furlough, including at least one junior to the Claimant. The Organization argues that the Claimant was improperly denied recall at this time.

Rule 36 (a) reads as follows:

"(a) When forces are increased or vacancies occur, senior employes in the respective ranks, seniority groups, and seniority districts shall be given preference in employment, except that a trackman laid off as a result of force reduction

or displacement will not be notified to return to service under this rule on other than the section on which last worked unless, within ten (10) calendar days after such employee is laid off or displaced, he notifies the Division Engineer, with copy to the General Chairman, of such other section or sections as he desires to work upon."

The work involved herein was on "other than the section on which [the Claimant] last worked." He had not given the specified notice that he wished to be recalled for "such other section or sections." On this basis, the Carrier argues that the Claimant properly was not notified of the opportunity to return from furlough.

The Organization points out that the Carrier has been in the process of realigning section territories, and that there were five such sections at the time the Claimant was furloughed and three at the time the dispute arose. The Organization contends that there was an accepted "practice" in view of this reduction, under which Trackmen no longer filed the preference notices specified in Rule 36(a). This alleged "practice" is not supported by any documentation. In view of this, the Board is without authority to vary the terms of the Rule, which is unambiguous. The Carrier further argues that it had knowledge of the Claimant's unavailability during the period in question. This, however, is without consequence in the face of the Rule, which is subject to enforcement unless and until mutually modified in appropriate fashion. The Carrier denies such modification has occurred.

With this conclusion, it is unnecessary to examine the Carrier's argument as to the alleged untimeliness of the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.