CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28451
Docket No. SG-28195
90-3-87-7-709

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc.
(Baltimore and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railway Co. (B&O):

On behalf of T. W. Mayfield, I.D. #1514868, working in system crossing gang. Assigned hours 7:00 a.m. to 11:00 a.m., 11:30 a.m. to 3:30 p.m. Meal period 11:00 a.m. to 11:30 a.m. Rest days Saturday and Sunday.

(a) Carrier violated the current Signalmen's Agreement particularly Rule 32, (c) 'Note - The right to use an employee on extra work is not to be used as authority to work him on this basis instead of advertising a new position when the need for such work is expected to last longer than ten (10) calendar days and in no event shall an employee be used on extra work in the same class and at the same location for longer than ten (10) working days. Rule 31(b) does not apply to an extra employee at the expiration of the extra work.'

(b) Carrier worked junior employee without bulletin and did not comply with Rule 32 - '(c) Note' from July 1 until August 15, 1986.

(c) Carrier should now be required to compensate senior employee T. W. Mayfield for the difference in pay and all overtime involved, from July 1 thru August 15, 1986. This is an on-going claim if the practice re-occurs. Carrier file: 15-46-(86-54) I"

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 Carrier filled two consecutive vacation vacancies on Signal Maintainer positions by recalling the senior furloughed employee. The Claimant, who is senior to the employee used, was regularly assigned as a Signalman at the time. The Organization seeks the difference between the earnings of the junior employee and the Claimant during this period of time on the basis the Carrier failed to follow the principle of seniority when it used the junior employee.

At issue in this case is paragraph (c) of Rule 32, which provides for the recall of furloughed employees. Paragraph (c) reads as follows:

> "Employees referred to in paragraph (a) who desire to be used on extra work, relief work on regular positions during absence of regular occupants or positions pending advertisement will so indicate by filing written notice with the Signal Supervisor with copy to the Local Chairman. When such notice is on file they will be given preference for such service together with employees referred to in Rule 31(d) in the order of their seniority. If the senior employee fails to report immediately the senior available employee may be used until the senior employee reports, but in such case the senior employee shall give sufficient advance notice of intention to report to permit advising the displaced employee before the end of the preceding working day. Failure of a laid off or furloughed employee to report within ten (10) days shall be considered as withdrawal of the written notice referred to above.
>
> Note: The right to use an employee on extra work is not to be used as authority to work him on this basis instead of advertising a new position when the need for such work is expected to last longer than ten (10) calendar days and in no event shall an employee be used on extra work in the same class and at the same location for longer than ten (10) working days. Rule 31(b) does not apply to an extra employee at the expiration of the extra work."

Rule 12(b) of the National Vacation Agreement states that the absence of a vacationing employee does not constitute a "vacancy" under any Agreement. Rule 32(c) distinguishes between "extra work" and "relief work on regular positions during absence of regular occupants." As the service involved in this case falls within the latter of these two classifications, the Note to Rule 32(c) does not apply. Accordingly, the Carrier was not obligated to post a bulletin when it elected to fill the positions during the incumbents' vacations.

Because the Carrier does not have relief employees, however, the Vacation Agreement requires it to make an effort "to observe the principle of seniority" when filling the positions of vacationing employees. This provision, standing alone, does not require the Carrier to make such work available to employees who are regularly assigned. Rule 32(c), on the other hand, states that furloughed employees who have filed their addresses will be given preference for the type of work covered by that Rule "in the order of their seniority."

Reading Rule 12(b) of the National Vacation Agreement together with Rule 32(c), we can find no basis to conclude the Claimant had any preferential right to this work over the furloughed employee. The Agreement, therefore, was not violated.

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 19th day of July 1990.