

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 Employes
(Elgin, Joliet and Eastern Railway Company

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

(1) The Agreement was violated when the Carrier instructed regularly assigned Painter C. Short, instead of furloughed Water Service Foreman K. Kratz, to perform water service foreman's work on August 29, 1986 (System File BG-6-86/TM-17-86).

(2) As a consequence of the aforesaid violation, Mr. K. Kratz shall be allowed eight (8) hours of pay at the water service foreman's pro rata 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.

Based on a reduction in force, the Claimant and another employee were required to leave their positions as Water Service Foremen (Group 2). The other employee, who was senior to the Claimant, exercised his seniority on a position as Painter (Group 3), while the Claimant herein was furloughed.

When a one-day vacancy occurred for the position of Water Service Foreman, the Carrier assigned the work to the employee in the position as Painter.

The Organization argues that the Claimant should have been returned to service under Rule 31(b) as the "senior unassigned" employee holding seniority as Water Service Foreman. Rule 31(b) reads as follows:

"(b) New positions or vacancies of thirty (30) calendar days or less duration shall be considered temporary and may be filled without bulletining except that senior unassigned employees in the seniority rank will be given preference in assignments, if available. Such assignment not subject to displacement."

The Carrier argues that the other employee who was assigned the temporary position was not only senior to the Claimant but also was "unassigned" as a Water Service Foreman, despite his assignment as a Painter.

The question for resolution here is whether "unassigned," as stated in Rule 31(b) refers to an employee with seniority as Water Service Foreman, regardless of his assignment in another position, as contended by the Carrier, or does "unassigned" refer only to an employee "unassigned" to any position (i.e., furloughed), as argued by the Organization.

The Board finds the Carrier's position is correct. Rule 31(b) refers to "senior unassigned employees in the seniority rank." The other employee, being "assigned" to the Painter position, did not relinquish his seniority as Water Service Foreman. That position is in a seniority rank separate from that of Painter. Thus, the Claimant was not the senior unassigned employee holding seniority as Water Service Foreman. The Carrier properly assigned the position to the other employee.

Third Division Award 26819 involving the same parties, also concerned a dispute as to whether a furloughed employee was entitled to a temporary vacancy which had been given to an employee assigned to another position. Award 26819 states as follows:


"Nevertheless, the Board finds no merit in the claim, under the particular circumstances here involved. First, the transferred employee held seniority in the Roadway Machine Operator classification and was senior to the Claimant in such seniority. Second, the work involved was within the same craft and department, rather than assigned to someone outside such craft and department."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1990.