

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29074
Docket No. MW-28022
91-3-87-3-571

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it failed to allow Trackman-Driver D. Bradley to exercise his seniority to displace on Gang 151 beginning January 6, 1986 (System File B-2157/EMWC 86-3-19A).

(2) Mr. D. Bradley shall be compensated for all wage loss suffered as a result of the violation referred to in Part (1) above."

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.

The basic facts are undisputed. Claimant attempted to exercise his seniority to displace a junior employee on Joplin Gang 151 effective January 3, 1986. After traveling to Joplin, Missouri, that day, Claimant was unable to locate the work site and called the Roadmaster for directions. Because the crew had already started work for the day, it was too late to bump. Claimant said he would report the next regular workday, January 6, 1986.

Claimant alleges the Roadmaster said Gang 151 had already been given their cutoff notices and had only two more days of work to do. According to Claimant, the Roadmaster asked why he wanted to bother bumping for only two more days of work. There being no other viable opportunities to exercise his seniority, Claimant took furlough effective January 6, 1986. A position on Gang 151 was later bulletined and then canceled due to error. This led Claimant to inquire about the status of Gang 151. On February 13, 1986, Claimant learned that Gang 151, with the junior employee's position, had not been

abolished as the Roadmaster said it would. Claimant alleges the false information provided by the Roadmaster violated, among others, Rule 12 which provides that an employee will be permitted to exercise his seniority to displace junior employees.

Carrier contends, essentially, that Claimant elected to take furlough rather than work in Joplin. It says it expected Claimant to show up for work on January 6, 1986. Instead, Claimant filed his name and address and assumed furlough status. Carrier does not dispute that Claimant traveled to Joplin on January 3, 1986, in an attempt to displace that day but was unable to do so because he was unable to locate the work site in a timely manner.

The Organization objected to several of the Carrier's Submission Exhibits as being new material not provided or argued on the property. We have carefully reviewed the record and Submissions and conclude that Carrier's Exhibits 2, 3, 5, Pages 3 and 13 were not properly addressed on the property. Accordingly, the information and arguments contained therein have not been considered by this Board.

Confining ourselves, as we must, to the record the parties developed on the property, we find the Claim should be sustained. The Claimant's repeated allegations of false and misleading information stand unchallenged by Carrier's evidence. No opposing statements were provided that affirmatively deny or even mention the subject of providing false information to Claimant. Carrier's position that Claimant elected furlough is merely a product of assertions by various Carrier representatives far removed from the actual events in dispute.

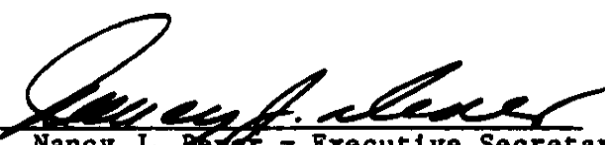
It is implicit in Rule 12 that Carrier shall provide reasonable assistance to an employee and shall not impede an employee's efforts to exercise seniority. On this record, we find that Carrier failed in those obligations. Accordingly, the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.