

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29731
Docket No. MW-29494
93-3-90-3-430

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
(
(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the Carrier assigned North of Texarkana Water Service employe J. A. Johnson instead of South of Texarkana employe S. E. Swaim to a water service repairman position headquartered at Tyler, Texas on the South of Texarkana Seniority District effective December 12, 1988 (System File MW-89-29-CB/481-86-A).
- (2) As a consequence of the aforesaid violation, Mr. S. E. Swaim shall be allowed a December 12, 1988 seniority date as a water service repairman on the South of Texarkana Seniority District and he shall be allowed compensation for all wage loss suffered beginning sixty (60) days retroactive from June 26, 1989 and continuing until the violation was 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 employe 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 November 1988 the Carrier issued a bulletin advertising a Water Service Repairman vacancy, headquartered at Tyler, Texas, in Seniority District 2. There were no bids received from any employee assigned to or holding seniority in Seniority District 2. The position was assigned to an employee who, while having previously served as a Water Service Repairman, was without any prior seniority rights in Seniority District 2.

The Claimant holds seniority in Seniority District 2, although with no previous service in Water Service. He had been in furlough status since May 19, 1986. In June 1989 a Claim was initiated on the Claimant's behalf. This Claim made reference to the filling of a Water Service Helper position in Tyler, alleging that the position should have been offered to the Claimant. During the on-property claim handling procedure, reference to the Helper position continued. It was not until referral to the Board that the Organization based its Claim and its argument on the Water Service Repairman position.

The Carrier properly took note of this change of position. The Board finds this of significance. At issue here is the Organization's original contention that the Carrier was required to recall a Seniority District 2 employee to a Helper position, with the Carrier denying correctly that such position had been filled. It is a quite separate question as to whether the Carrier is required to recall an employee from furlough for a Repairman position for which the employee has no demonstrated qualification. This dispute was not addressed on the property and thus is not ripe for Board review.

Two other procedural matters raised by the Carrier should also be mentioned. One is the contention that the Claim was untimely, being raised some seven months after the incident on which the claim (eventually) relied. The difficulty here is that the Carrier failed to raise this objection on the property.

Likewise, the Carrier contended, later in the claim handling procedure, that the Claimant had no standing, since, as of August 9, 1990, he had not returned to active status within four years and thus had forfeited seniority. This begs the issue, however, since the Claim was initiated in June 1989 while the Claimant's seniority standing remained intact.

It remains the fact, however, that the issue of filling a position of Repairman was not addressed on the property and thus is not suitable for resolution by the Board.

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A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.