

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29875
Docket No. MW-29872
93-3-91-3-247

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville
& Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier recalled junior employes (J. A. Lindsey and O. L. Gardner) instead of Mr. S. W. Barnes to fill a track repairman's vacancy on March 20, 21, 22, 23, 26, 27, 28 and 29, 1990 [System File 6(10)(90)/12 (90-441) LNR].
- (2) As a consequence of the aforesaid violation, Mr. S. W. Barnes shall be allowed sixty-four (64) hours of pay at the track repairman's straight time 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 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.

At the time of the incident that gave rise to this claim, Claimant, a Track Repairman, was on furlough status due to the abolishment of his position. The Organization alleges that in recalling two Trackmen junior to Claimant for temporary vacancies between March 20 and 29, 1990, Carrier violated Rules 21 and 22 of the Agreement, which require that when vacancies are not filled by employees in service, they are to be filled by cut-off men who have retained their seniority by filing their names and addresses, in

order of seniority. It is also the Organization's contention that Carrier failed to give Claimant proper notice of the vacancies.

Carrier counters that Claimant was notified of the vacancies by letter dated March 19, 1990, and that he failed to respond. It suggests that there is no substance to his claim.

While Carrier produced the March 19, 1990 letter with its Submission, there is no indication of its inclusion in the record on the property. Thus, it is not properly before this Board. Carrier contends that given that it maintains the letter was sent and Claimant insists that he did not receive it, there is an irreconcilable dispute in facts. As a consequence, the claim must be dismissed. The Organization disagrees and argues that it was Carrier's responsibility to send him a letter or telegram telling him to report to the position within ten calendar days or forfeit his seniority, rather than just a general notice sent to all furloughed employees.

This Board has reviewed Rule 22 (Return After Force Reduction) and finds that it provides the most senior cut-off employee (in various classifications) with the right to be given an opportunity to take temporary assignments with Carrier. This is in contrast to other Agreements on other properties where the right to grant temporary assignments to furloughed employees is optional. (See, for example, Third Division Awards 28047, 28048, 28050, 28051, 28052, 28053, 28054, 28056, and 28573.)

Under these circumstances, it was incumbent upon Carrier to notify Claimant that he had the first right to the work. This Board does not find that in allegedly preparing and mailing a general announcement about the availability of work, dated the day before the work was to commence, Carrier met its obligation to Claimant. Consequently, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.