

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30594
Docket No. MW-29881
94-3-91-3-255

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
(Clinchfield Railroad Company)

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

- (1) The Agreement was violated when the Carrier permitted P.D. Barnett, D.A. Jones and R.D. Jones to displace D.A. Cavins, S. Miracle and H.W. Robinson on Gang 5C76 effective January 23, 1990 [Carrier's File 12(90-532) CLR].
- (2) As a consequence of the aforesaid violation, Messrs. D.A. Cavins, S. Miracle and H.W. Robinson shall each be compensated for all wage loss suffered, i.e., they shall receive compensation equal to that paid to Messrs. P.D. Barnett, D.A. Jones and R.D. Jones, respectively, beginning January 23, 1990 and continuing until the violation is 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 employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants Cavins, Miracle, and Robinson, furloughed Track Laborers, bid on and were awarded permanent positions on Gang 5C76, effective January 2, 1990. Twenty-one days later, on January 23, 1990, Carrier allowed three more senior furloughed employees, Messrs. Barnett, Jones, and Jones, to exercise their seniority in the positions over Claimants. The Organization argues that because the senior employees failed to place themselves in positions within ten days of their force reductions, in accordance with Rule 15 of the Agreement, Claimants had the right to retain their jobs and not be forced back into furloughed status. Rule 15 reads as follows:

"RULE 15 - FORCE REDUCTION

* * *

(d) When force reductions are made, positions are abolished, or displacements occur, employees affected, other than laborers, shall, within ten (10) days, exercise their seniority to positions to which their seniority entitles them. Employees other than laborers shall exhaust all seniority rights before being considered furloughed, and failing to do so, will forfeit all seniority established under provisions of this agreement. Employees who are cut off or displaced and used in temporary service before asserting displacement rights, shall have ten (10) days after being released from such temporary service in which to exercise seniority rights in accordance with provisions of this rule.

Laborers shall have the right to exercise seniority as such to other gangs, but will not be required to do so. When done, seniority must be exercised within ten (10) days. Where it is not done, laborers status becomes that of furloughed employees."

Carrier points out that "...This instant dispute involves senior employees who had been furloughed for some time and discovered junior employees working on permanent bulletined assignments to their exclusion." It argues that Rule 15, with its requirement to bid on a job within ten days, is not applicable, since it addresses the procedures to be utilized by employees involved in the initial effects of force reduction and subsequently furloughed.

It is not clear from the record whether the positions in question on Gang 5C76 were available when Messrs. Barnett, Jones, and Jones were affected by a reduction in force. If they were, the three were bound by Rule 15 and had ten days in which to apply for them. It appears, however, that they did not apply for those positions or seek to displace elsewhere, and thus were furloughed.

After their furloughs, there were, as pointed out by the Organization in its letter of June 20, 1990, several methods by which they could be returned to work. They could be recalled to an advertised position for which no one had applied or to fill a temporary vacancy pending bulletin assignment. In addition, they could make application to an advertised position. In the latter instance, furloughed employees are bound by the applicable procedures and time limits for placing bids outlined in the Agreement (for example, Rule 7, New Positions and Vacancies). If they apply in a timely manner, their seniority will be a key factor in the awarding of the position. Under no circumstances, however, do furloughed employees have the automatic right to displace junior employees who have followed proper procedures and have legitimately been assigned positions.

Had Messrs. Barnett, Jones, and Jones applied for the positions on Gang 5C76 in a timely fashion, they would undoubtedly have been assigned them. But since they did not, for whatever reason, and Claimants were awarded the positions; the latter had the right to retain them. As a consequence, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.