

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31378
Docket No. MW-32053
96-3-94-3-435

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. R. S. Palmer, Jr., to exercise his seniority (bump junior employee K. A. Lake) onto SPG Force 6XC6 on July 2, 1993 and instead allowed the junior employee to continue working while Mr. Palmer was forced into a furlough status [System File SPG-TC-8097/12 (93-1026) CSX].
- (2) As a consequence of the above-stated violation, Mr. R. S. Palmer, Jr., shall be allowed compensation at the SPG Trackman's rate for "*** ten (10) hours for each of the following claim dates, July 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, 29, August 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 30, 31, September 1, 2, 6 - Holiday, 7, 8, 9, 13, 14, 15 and 16, 1993, plus meal allowance of \$84.00 for each week of this claim (or a total of 11 weeks), plus \$40.00 travel - allowance for each week of this claim or a total of 11 weeks, plus credited with 1/14 days for each date of this claim for vacation qualification plus credited with the month of July, August and September for retirement month, plus all other benefits and all overtime made by Mr. Lake account of the aforementioned rule violations."

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 the dispute involved herein.

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

On July 2, 1993, Claimant was notified that he was displaced. At the time of notification he indicated that he desired to displace junior Trackman K. A. Lake. He was told that Lake was going to be laid off, and was not allowed to effect a displacement. In fact Lake was never laid off, but continued to work through September 16, 1993. The claim before this Board seeks compensation for wage losses incurred by Claimant, plus meal and travel allowances he would have received if he had been permitted to displace Lake.

Carrier defends against payment on the grounds that had Lake and Claimant both been laid off, as anticipated on July 2, 1993, and it was necessary to utilize extra Trackmen when the gang moved to a different district following the July 4th Holiday, Lake would have been the one to be recalled because he would have been a furloughed employee on the district where the gang was working at the time, and would have preferential entitlement to the work.

This argument is not found persuasive by the Board. The facts are that Lake was never furloughed; he never missed a day. Further, Carrier should have permitted Claimant to exercise seniority rights over Lake, but it did not. The Board has been given no sound reason why Claimant was not allowed to effect a displacement. That Lake may have been a candidate for furlough the next week, or even the next day, is no excuse. Claimant is entitled to displace a junior employee, even if the displacement is for a period of time known to be of brief duration. Had Carrier allowed Claimant to effect a displacement when he asked to do so, there would not have been a potential situation to effect a recall from the district where a temporary vacancy arose. Carrier is not privileged to avoid its obligation to Claimant on the basis that had Lake actually been furloughed, and then it was necessary to effect a recall, he would have been the one to be recalled.

The claim has merit. It will be sustained for wage loss incurred, and the time paid for will be credited for vacation and other entitlements, as requested. The portion of the claim seeking travel and meal allowances is not appropriate, as Claimant did not have exposure to these costs. That aspect of the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

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 29th day of February 1996.