

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31486
Docket No. MW-31379
96-3-93-3-266

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier assigned junior employe C. W. Vinson instead of recalling and assigning Mr. J. W. McBride to fill the welder laborer's position at the Nashville Rail Welding Plant pending bulletin on December 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30 and 31, 1991 [System File 19 (4) (92)/12 (92-212) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. W. McBride shall be allowed eight (8) hours' pay, at the welder laborer's straight time rate of pay, for each of the dates cited 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 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.

As evident by the Statement of Claim, it is the Organization's position that the Carrier recalled an employee junior in seniority to fill a vacancy for which Claimant was qualified and available.

The Carrier, on the other hand, states that this is not a recall situation. Rather, Claimant, when laid off, declined to exercise his seniority to displace a junior employee and opted, in lieu thereof, to be furloughed.

This Board has no way of determining whether Carrier recalled a junior employee as alleged, or whether Claimant opted for furlough in lieu of displacing a junior employee.

A statement from Claimant would have been most helpful, but without it, we have an irreconcilable dispute in facts which this Board cannot resolve. The claim will, therefore, be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.