

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31747
Docket No. SG-31921
96-3-94-3-256

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of G.J. Wingham for payment of 40 hours per week at the Signalman's rate for 90 calendar days, beginning September 3, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 2-A-1(d), when it recalled the Claimant to service and then improperly abolished his position. Carrier's File No. SG-568. General Chairman's File No. RM2446-52-593. BRS File Case No. 9334-CR."

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 or 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 were given due notice of hearing thereon.

This dispute involves an application of the provisions of Rule 2-A-1.(d) which reads as follows:

"(d) Awards will be made within ten (10) calendar days after the close of the advertisement period to the senior bidder in the class. If there are no bids from employees who possess seniority in the class, Rule 3-B-2 will govern. Assignment to the position will be made within ten (10) calendar days following the date the position is awarded. Notice of awards will be posted at the headquarters involved. A furloughed employee will be considered as having bid for any position or vacancy not requiring a change in residence. If he is the senior bidder in the class, the position will be awarded to him. If such employee fails to report for the position, within ten (10) calendar days, he shall forfeit his seniority in that class and in all higher classes, unless such position is expected to be of less than ninety (90) calendar days duration."

The fact situation reveals that, by notice dated August 19, 1992, Carrier advertised a group of positions which included the Signelman position here involved. The advertisement indicated that bids would be accepted for the positions until "12:00 P.M. 09/02/92." When no bids were received from employees in active service for this Signelman's position, Carrier, via certified mail, notified the Claimant on August 31, 1992, that he was recalled from furlough under Rule 2-A-1.(d) and assigned to the Signelman position. In the recall and assignment notice, Claimant was informed that his failure to return to service for this position would result in the forfeiture of his seniority rights. Claimant did, in fact, return to service and reported for the assignment on September 3, 1992. However, he was not permitted by Carrier to assume the position. Six days later, on September 9, 1992, Carrier issued a notice which canceled the position which had been bulletined on August 19, 1992, and assigned by the recall notice to Claimant on August 31, 1992.

Therein lies the crux of this dispute. The Organization contends that when Claimant was recalled from furlough and assigned to the Signelman position under threat of forfeiture of seniority rights if he failed to return, he was entitled to at least 90 days pay under the agreement language found in Rule 2-A-1.(d). Carrier insists that the advertisement of August 19, 1992 was posted in error and that Claimant never, in fact, performed any service on the Signelman position.

From the Board's review of the facts and after consideration of the arguments advanced by the parties, it is our opinion, in this particular case and without hereby establishing a precedent for any other case which does not have the same fact situation, that a reasonable resolution of this dispute lies in the offer of settlement which was proposed by Carrier during the on-property handling of the dispute. That is, that Claimant be allowed five days pay which represents the extent of liability which would have been incurred if Carrier had given a timely notification of cancellation of the position to which Claimant was recalled from furlough and assigned to under threat of forfeiture of seniority. The Board so orders.

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 24th day of October 1996.