

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32336
Docket No. MW-32031
97-3-94-3-403**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier allowed junior employees S. Dotson, R. L. Houston and L. E. Marker to work on SPG Gang 6XT5 on August 24, 25, 26, 30, 31, September 1, 2, 7, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 27, 28, 29, 30, October 4, 5, 6, 7, 11, 12, 13, 14, 18, 19, 20 and 21, 1993 instead of Mr. J. E. Dascani. who was senior and available [System File SPG-TC-9014/12 (93-1077) CSX].**
- (2) As a consequence of the above-stated violation, Mr. J. E. Dascani shall be allowed compensation at the SPG Class 'A' Machine Operator rate for:**

'...ten (10) hours each work day that SPG force 6XT5 has worked junior employees, August 24, 25, 26, 30, 31, September 1, 2, Holiday 6, 7, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 27, 28, 29, 30, October 4, 5, 6, 7, 11, 12, 13, 14, 18, 19, 20 and 21, 1993, plus all overtime, plus \$84.00 SPG meal allowance a week for a total of nine (9) weeks, plus \$40.00 travel allowance a week for a total of nine (9) weeks and credited with 1.25 days for each day of this claim for vacation qualification. **'**

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 were given due notice of hearing thereon.

Claimant established and held seniority as a Trackman from August 1, 1977 and SPG Class "A" and "B" Machine Operator rights from July 31, 1978 on the Pittsburgh East Seniority District of the former Baltimore & Ohio Railway Company. He was placed on medical leave on October 23, 1989 and was not medically qualified to return to service until July 25, 1991. By mistake, Carrier sent Claimant an April 22, 1991 letter of recall and a May 22, 1991 follow-up letter advising him of his removal from the seniority list for not timely responding. Both letters were returned as not forwardable from the Post Office. During this period Claimant had moved leaving a forwarding address with the Post Office, but not with Carrier.

Due to field office seniority rosters not being updated with Claimant's removal, he was recalled to service as a Trackman on August 5, 1991, but was furloughed at the end of October 1991. He was not called to work during 1992. In early 1993 when Claimant became aware that his name had been removed from the seniority roster, he wrote a grievance letter protesting this action, which was received by Carrier on February 16, 1993. The Organization appealed Carrier's initial determination that he was properly removed from the seniority roster, and as a result of a settlement reached at the claims conference on September 29, 1993, Claimant's seniority was reinstated. There was no request for monetary reimbursement at that time.

Claimant returned to work on October 23, 1993 on a SPG Gang. The instant claim was filed on October 26, 1993 seeking all lost wages Claimant suffered from January 1, 1992 as a result of his improper removal from the seniority roster. The claim

is premised upon Carrier's reinstatement of Claimant's seniority on September 29, 1993, and seeks reimbursement for a period commencing 60 days prior to the date of the claim, when junior employees worked on SPG Gang 6XT5, including lost wages, overtime, meal and travel allowances and vacation qualification.

The Organization argues that this is a separate claim from the one protesting the removal of Claimant's seniority, and only came into being once Claimant's seniority was restored, because it alleges a violation of the seniority provisions of the Agreement. It contends that Claimant suffered financial consequences as a result of Carrier's mistake in removing his name from the seniority rosters, and that Claimant was in no manner responsible for Carrier's improper action and should not have to suffer as a result of it.

Carrier contends that it resolved the prior claim by reinstating Claimant's seniority effective September 29, 1993 based upon its consideration of fault attributable to each party, including Claimant's failure to keep Carrier informed of his current address and untimely contest of his removal from the rosters. Carrier argues that it is unethical for the Organization to delay complaining about loss of wages during the processing of the prior claim and attempting to process it as a new claim because it is an additional remedy being sought on the same set of facts known to the Organization at the time the parties agreed to terms of settlement in September 1993. Carrier notes that Claimant would not have been subject to work on any date prior to September 29, 1993 when his seniority was restored, so no remedy is appropriate for those claimed dates. Further, Carrier contends that the claim for expenses not incurred is excessive.

Based upon a review of the record as a whole, the Board is convinced that Claimant is certainly entitled to monetary compensation for time worked by junior employees on SPG Gang 6XT5 after the reinstatement of his seniority on September 29, 1993. His seniority rights were clearly established as of the date of the prior settlement, and he is entitled to such assignment thereafter. However, with respect to the dates between August 24 and September 28, 1993 sought in this claim, the Board is of the opinion that the Organization is attempting in this claim to add a financial component to its previously negotiated settlement calling only for reinstatement of Claimant's seniority. Carrier's assertion that the Organization knew of the facts of less senior employees working on SPG Gang 6XT5 at the time of the September 29, 1993 conference was unrebutted on the record and must be accepted by this Board as fact. Third Division Awards 29679, 29216, 29213, 29132, 28459. Under such circumstances, it would be reasonable for Carrier to assume that all consequences of the violation relied upon in the

Organization's prior claim were being fully and finally settled thereby. Because this claim is premised upon such restoration of seniority, it should have been advanced at the time of settlement. Thus, no monetary award will be ordered for the time period encompassed by this claim prior to September 29, 1993.

With respect to the claim for lost meal and travel allowance, unlike the situation in Public Law Board No. 4381, Case 7 relied upon by the Organization, the instant Agreement makes clear that compensation for such expenses is for the purpose of making employees whole for any costs associated with meals and travel which they incurred as a result of such work assignment. Section 9, Meal Allowance, notes that no such allowance will be paid for employees absent during any work day, and Section 11, Travel Allowance, specifies its purpose as being to "defray the costs associated with travel." Thus, we find that Claimant is not entitled to such compensation for the September 29-October 21, 1993 time period encompassed by this Award. See Public Law Board No. 5142, Case 2; Third Division Award 27967.

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 13th day of November 1997.