

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33343  
Docket No. MW-32273  
99-3-95-3-86

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier recalled Mr. W. L. Fox to service as a trackman/casual driver and several days later improperly abolished the position on the basis that he did not have a proper license to perform the work assigned to said position (System Docket MW-3135).

(2) As a consequence of the violation referred to in Part (1) above, Claimant W. L. Fox shall be compensated at the appropriate trackman/casual driver's rate for all wage loss suffered between March 11 and 30, 1993 as a result of the Carrier's actions.”

**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 Fox has established and holds seniority as a trackman/casual driver and, at all times material herein, was furloughed from service and awaiting recall. On February 16, 1993 the Carrier issued a Bulletin for the position of trackman/casual driver improperly identifying the vehicle in the bulletin as a pickup truck when the vehicle in question was actually a boom truck. Claimant, who was awarded the position because no qualified bids were received, holds a vehicle operator's license for the former vehicle, but not the latter. Subsequently, when Carrier discovered the error in the bulletin and the fact that Claimant was not licensed to operate a boom truck, it abolished the position.

The Organization contends that the Carrier violated the parties' agreement because the abolition of the position in question was improper in light of the fact that the Claimant returned to work pursuant to the bulletin under Rule 4, Section 3 which would have required the Claimant to forfeit his seniority if he did not. Thus, the proper action would have been for the Carrier to exercise its right under Rule 3, Section (e) to cancel the advertisement within seven days of the original posting. In other words, since the Claimant was required to report for duty upon loss of seniority in the event that he did not, the Carrier must provide at least thirty day's service, the anticipated minimum duration of the assignment pursuant to Rule 3. The Carrier on the other hand argues that nothing in Rule 3 or 4 compels such a result.

We have examined the two cited rules as well as the authority relied upon by the Organization in support of its contentions and we find nothing that compels us to reach the conclusion urged by the Organization. Rule 3 simply provides that in the event that the Carrier seeks to fill certain positions that it will advertise the positions under specified procedures and that furloughed employees, as the Claimant was in this case, will be automatic bidders for such positions. Rule 4 provides that any furloughed employee will lose all seniority if he or she fails to report within a specified time to a position of thirty or more days duration. Thus, there is nothing on the face of these two rule provisions that support the contention that the Claimant was entitled to at least thirty day's employment once called to return to service as an automatic bidder under Rule 3.

Apparently, the Organization infers from the interplay of these two Rules that if an employee is forced to report to a position upon pain of loss of seniority he or she should be guaranteed a minimum period of employment. In support of this position the Organization cites several prior awards. First, we find that all of the awards relied upon

by the Organization are distinguishable for in all cases the Rules in question were rules other than those implicated here. Thus we turn next to the wisdom of the Organization's proposition that under the circumstances the Claimant was entitled to thirty day's of employment. Although that might be a salutary result, a question on which we do not pass, nothing in the parties' agreement or evident in their mutual intent lying behind the terms of the agreement, compels that conclusion.

**AWARD**

**Claim denied.**

**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 June 1999.**