

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34998
Docket No. MW-31074
00-3-93-3-56**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to permit Welder Helper A. F. Venezia to displace junior employe D. Hammons at Columbus, Indiana on February 20, 1991 (System Docket MW-2125).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. F. Venezia shall be compensated for all wage loss suffered beginning February 20, 1991 and continuing until the violation ceases.”**

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.

This case involves a claim by the Organization that the Carrier violated the Agreement by improperly placing the Claimant on furlough status and denying him his contractual right to exercise seniority to displace junior Welder D. Hammons at Columbus, Indiana, on February 20, 1991.

This dispute, according to the Organization, is governed by Rules 3 and 4:

RULE 3 - SELECTION OF POSITIONS

"Section 1. Assignment to Position.

In the assignment of employees to positions under this Agreement, qualification being sufficient, seniority shall govern.

Section 4. Filling temporary vacancies.

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

(b) An employee so assigned may be displaced by senior qualified employee working in a lower rated position or in the same grade or class, provided displacement is made prior to the starting time of the assigned tour of duty, by notice to the foreman or other officer in charge. The latter employee will not be subject to displacement from such temporary assignment by a senior employee unless the senior employee is unable to exercise seniority to another position not requiring a change in his working zone.

(c) Employees temporarily assigned in accordance with the foregoing will be governed by the starting time, headquarters, tour of duty and rate of pay of the position so filled.

The provisions of this paragraph (c) apply only when positions are filled by the Company in accordance with paragraph (a) of this Rule, and when an employee in the exercise of seniority displaces a junior employee.

(d) An employee assigned to temporary service may, when released, return to the Position from which taken without loss of seniority; in the event the position from which he was taken has been permanently filled by a senior employee in the exercise of seniority or abolished during his absence, he may exercise his seniority in accordance with provisions of Rule 4, Section 2.

RULE 4 - SENIORITY

Section 2. Exercise of seniority.

(a) Except as otherwise provided, an employee may exercise seniority to a position for which he is qualified:

1. when his position is abolished;
2. when the senior employee displacing him physically assumes the duties of the position;

(b) An employee entitled to exercise seniority must exercise seniority within ten (10) days after the date affected. Failure to exercise seniority to any position within his working zone (either divisional or Inter-Regional) shall result in forfeiture of all seniority under this Agreement, except employees who decline to exercise Inter-Regional seniority shall only forfeit all Inter-Regional seniority. If he presents evidence to his supervisor that extenuating circumstances prevented the exercise of seniority, the ten (10) days specified above shall be extended proportionately to the extent of his absence on account of such circumstances. An employee who is unable to so exercise seniority and who

elects not to exercise other seniority, shall be furloughed." (Emphasis supplied.)

On January 18, 1991, prior to this dispute arising, the Carrier abolished the Claimant's position as a Welder Helper at Hawthorne Yard. On January 25, 1991, within the ten-day period prescribed under Rule 4, Section 2(b), the Claimant exercised his rights under Rule 3, Section 4(b) to displace E. Pierson, a junior Welder Helper occupying a temporary vacancy at Avon Yard. Thereafter, on January 28, 1991, the Avon Yard position was placed on bulletin, and on February 11, 1991, a senior qualified Welder Helper displaced the Claimant. Nine days later, on February 20, 1991, the Claimant sought to displace Mr. Hammons, a junior Welder Helper in a separate work zone at Columbus, Indiana. The Carrier disallowed the displacement on the grounds the Claimant had been returned to furlough status at the expiration of the ten-day bumping period following the abolishment of his Hawthorne Yard position on January 18, 1991.

The Organization asserts that the Claimant exercised his seniority when he displaced junior employee Pierson from the Welder Helper position at Avon Yard on January 25, 1991. This exercise of seniority, it argues, was within the ten days required under Rule 4, Section 2(b). So, too, according to the Organization, when the Claimant was displaced from the Avon Yard position after that position was placed on bulletin and a senior qualified bidder displaced the Claimant on February 11, 1991, he timely attempted to exercise his seniority as a Welder Helper on February 20, 1991 to the position held by junior Welder Helper Hammons. The Organization asserts that the Carrier improperly denied the Claimant the right to displace Mr. Hammons.

The Carrier, on the other hand, asserts that the Claimant's displacement of the junior employee from the temporary assignment at Avon Yard did not constitute an exercise of seniority under Rule 4, Section 2(b). According to the Carrier, therefore, the Claimant was returned to furlough status when he was displaced from the Avon Yard position on February 11, 1991, and he therefore had no rights to displace Mr. Hammons.

According to the Carrier, there were no available permanent positions in the Claimant's work zone when his advertised position at Hawthorne Yard was abolished on January 18, 1991. The Carrier asserts that he was then entitled to displace to any position in the seniority district for which he was qualified that was held by a junior employee. The Carrier concedes that the Claimant at that point could have exercised seniority to displace Mr. Hammons. It argues, however, that when the Claimant instead

assumed a temporary position under Rule 3, Section 4, and the ten-day bumping period following the January 18, 1991 abolishment of his Hawthorne Yard position expired, he no longer was considered a displaced employee entitled to exercise seniority under Rule 4, Section 2. Rather, the Carrier claims, he was properly returned to furlough status under Rule 3, Section 4.

After carefully reviewing the record evidence, we have determined that the claim must be sustained. This claim turns on whether the Claimant's displacement of Mr. Pierson from his temporary position at Avon Yard constituted an exercise of seniority under Rule 4, Section 2. If it did, then the Claimant's subsequent displacement from the Avon Yard position triggered a new ten day period under which he timely and properly sought to displace Mr. Hammons on February 20, 1991. If not, then he was correctly deemed to be furloughed, and the displacement to the Columbus, Indiana Welder Helper position properly was disallowed.

We carefully examined the record for any basis on which to rule that the Claimant's displacement of Mr. Pierson from his temporary Welder Helper position on January 25, 1991 was not an exercise of seniority under Rule 4, Section 2(b). The express terms of Rule 4, Section 2(b) merely require a displaced employee to "exercise seniority." The provision does not stipulate that the assertion of seniority must be to a permanent position, as the Carrier argues. In the absence of record evidence that the exercise of seniority required under Rule 4, Section 2(b) must be to a permanent position, we are constrained to apply the Agreement as written.

Accordingly, on this record we find that the Carrier improperly placed the Claimant in furlough status after he displaced Mr. Pierson from the temporary Welder Helper position at Avon Yard on January 25, 1991. In fact, record evidence demonstrates that the Claimant was able to displace Mr. Pierson because of his seniority, and we find therefore, that his bumping of Mr. Pierson was an exercise of seniority that satisfied Rule 4, Section 2(b). When the Claimant subsequently was displaced from the Avon Yard position on February 11, 1991, after it was bulletined and permanently awarded to a senior bidder, he again had ten days under Rule 4, Section 2 to exercise seniority. Accordingly, his attempted displacement of Mr. Hammons on February 20, 1991 was a timely and proper exercise of his seniority rights under the Agreement, and the Carrier violated the Agreement when it refused to allow it.

The Claimant shall be compensated for lost time and benefits.

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AWARD

Claim sustained.

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 20th day of September, 2000.