

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35087
Docket No. MW-31571
00-3-93-3-576**

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 recalled and assigned junior employee S. J. Vinglas to fill the Class 2 Backhoe Operator’s position at South Fork, Pennsylvania on March 23 through 31, 1992, instead of Mr. G. R. Conrad (System Docket MW-2599).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. R. Conrad shall be allowed fifty-six (56) hours’ pay at the applicable Class 2 Backhoe Operator’s rate and he shall be allowed credit for all benefits, i.e., S.U.B., vacation, health, etc., which accrue thereto.”**

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 Rules 3 and 4 of the Agreement when it assigned S. J. Vinglas, rather than the Claimant to fill a vacant backhoe position. At the time, both employees were furloughed Class 2 Backhoe Operators. It is undisputed that the Claimant has greater Class 2 seniority.

The Carrier's defense of this claim rests on its assertion that employees returning from furloughed status are required to take a return-to-duty physical, which includes a urinalysis drug screen. On March 23, 1992, when the Carrier determined it needed an employee to fill a Class 2 Backhoe Operator position at South Fork, Pennsylvania, it assigned Vinglas because his drug screen urinalysis results had been received and he was medically qualified for service on that date. The Carrier did not assign the Claimant to fill the position only because it had not received the results of his drug screen. Pointing to numerous Awards holding that an employee may be held out of service until the results of his drug screen are known, the Carrier asserts that it properly called Vinglas, who was the next available employee.

The Organization, on the other hand, asserts that the Claimant was available to return to service on March 23, 1992. Although the Claimant did take a return-to-work physical on March 19, 1992, the Organization argues, he was not required to do so because he had not been out of service for more than 90 days. Indeed, pay stubs submitted by the Organization during the handling of this dispute demonstrate that the Claimant was previously in service the week ending February 11, 1992. According to the Organization, therefore, the Carrier's decision to keep the Claimant out of service pending results of a drug screen administered in connection with a return-to-work physical was unjustified.

After reviewing the record evidence, we have determined that the Organization's claim should be sustained. The record evidence establishes that the Claimant had been furloughed less than 90 days, and was therefore qualified and available for service on March 23, 1992, notwithstanding the fact the results of his March 19, 1992 drug screen urinalysis had not been returned. Because the return-to-work physical was not mandatory, the Carrier's decision to hold the Claimant out of service pending the results of his March 19, 1992 drug screen was unjustified. As it is undisputed that the Claimant is senior to Vinglas, the Carrier violated the Agreement

by assigning Vinglas ahead of the Claimant to perform the subject work from March 23 through March 31, 1992.

Accordingly, the Organization's claim is sustained and the Claimant shall be allowed 56 hours' pay at the applicable Class 2 Backhoe Operator's rate and he shall be allowed credit for all benefits, i.e., S.U.B., vacation, health, etc., which accrue thereto.

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 15th day of November, 2000.