

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37430
Docket No. SG-37904
05-3-03-3-249

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Canadian National Railway (former Grand Trunk
(Western Railroad, Inc.)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (CN):

Claim on behalf of K. A. Randolph, for Carrier to return him to service and to compensate him at his applicable rate of pay for all time lost, including overtime, beginning on the date he should have been recalled. Carrier will cooperate and work with the Organization to determine the amount of compensation due the Claimant, account Carrier violated the current Signalmen's Agreement, particularly Rule 29, when on March 14, 2002, the Claimant found out that junior employees had been recalled from furlough and not him. Claimant was furloughed in February 2002. Carrier's File No. 8390-1-140. General Chairman's File No. 02-37-GTW. BRS File Case No. 12487-GTW.”

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 K. A. Randolph commenced employment with the Carrier on May 1, 2000 as a Temporary Signal Helper at Battle Creek, Michigan. In March 2001, the Signal Department force was reduced and 11 Signalmen jobs were abolished, including that of the Claimant, who was laid off on March 16, 2001. According to the Claimant, at that time, he contacted his Union Representative and was told that he would be returned to work in a few weeks.

All furloughed Signalmen were returned to work effective March 26, 2001. Supervisor of Signals and Communication Installation R. B. Perschbacher telephoned the Claimant three times instructing him to return to service. The Carrier did not receive a response from the Claimant.

In April 2002, more than one year after the recall, General Chairman S. R. Ellison informed the Carrier that the Organization would be submitting a claim because the Claimant believed that he had remained on furlough in March 2002 while junior employees had been recalled to service. The Organization's April 12, 2002 claim contended that the Claimant had not been contacted by the Carrier since being furloughed in March 2001 and was not aware until recently that junior employees had been recalled to service. The Organization requested that the Claimant be returned to service and compensated for all time lost.

Pursuant to discussions with the Organization, the Carrier agreed to reinstate the Claimant on May 3, 2002, but without compensation. Between May 3 and May 6, 2002, it made several attempts to contact the Claimant by telephone. Messages were left regarding his return to service, but without any response. The Claimant was sent an overnight letter on May 6, indicating that a physical examination was scheduled for May 8, 2002. A conversation was held with the Claimant on May 7

and pursuant to that discussion the physical examination was rescheduled for May 10, 2002.

Pursuant to that examination, Medical Review Officer J. J. Bernick, M.D. advised the Claimant that he was unfit to return to service due to the fact that he did not meet the Carrier's vision requirements. The Claimant was advised to contact his personal optometrist for an evaluation for corrective lenses, after which he was to recontact the Occupational Medical Center. The Claimant sent a prescription for corrective safety glasses from a prior employer to the Carrier's Medical Officer. The Carrier notified the Claimant that said prescription was rejected because it was not possible to ascertain if corrective lenses had been obtained or if they did correct his vision to meet Company standards. When the Carrier received no response, it was presumed that the Claimant had resigned.

Thus, the issue in this case is whether the Carrier acted improperly when it did not reinstate the Claimant with full backpay upon his claim that he had not been properly recalled from furlough. Rule 29, which is controlling, provides:

"When employees laid off by reason of force reduction desire to retain their seniority rights, they must file their address with the designated Carrier Officer and the General Chairman within twenty (20) days from date of reduction. They must immediately notify both the designated Carrier Officer and General Chairman of any change of address. Failure to comply with these provisions, or to return to the service within ten (10) days after being notified by Management of reasonably continuous employment being available, will cause forfeiture of all seniority rights. . . ."

The Organization takes the position that the Carrier violated Rule 29 when it did not reinstate the Claimant with backpay. It contends that an employee junior to the Claimant was improperly recalled prior to the Claimant and requests that he be compensated for all lost time including overtime commencing on the date he should have been recalled instead of the junior employee.

Conversely, the Carrier contends that it properly recalled the Claimant on two occasions, but he failed to properly respond. It further maintains that it even

reinstated the Claimant in 2002 when it had no obligation to do so and he did not follow instructions with regard to obtaining corrective lenses.

The burden of proof in this matter falls to the Organization to prove that the Carrier erred when it did not reinstate the Claimant. The Organization has been unable to meet that burden because the record discloses insufficient evidence to suggest that the Carrier did not fulfill its obligations. On the other hand, the Claimant failed to fulfill the Carrier's requirements to return to work after being notified by the Carrier. Thus, the claim must be denied.

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 22nd day of March, 2005.