

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38194  
Docket No. MW-38882  
07-3-05-3-318

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to allow Plumber S. Holmes to displace junior employee A. Mack on Gang I-052 on May 3, 2004 (System File NEC-BMWE-SD-4440 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Holmes shall now ‘. . . be allowed to bump the Plumbers position; be paid the difference in rate between the position, and also for any overtime missed by Mr. Holmes as a Plumber, until this issue is resolved.’”

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.

According to the Carrier, on April 27, 2004, B&B Plumber A. Mack was directed to return to duty in the B&B Department from furlough. As a result of that direction, on May 3, 2004, Mack was assigned to a new Plumber's position on B&B Gang I-052. According to the Organization, Mack was not on furlough, but was holding a Trackman's position and was given instruction by the Carrier to fill a Plumber's position. The Carrier responded that Mack did not have enough seniority as a Plumber to hold a Plumber's position after his Plumber's position was previously abolished and, although holding a Trackman's position in the Track Department immediately prior to assuming the Plumber's position on May 3, 2004 in the B&B Department, Mack was therefore in furlough status from the B&B Department as Plumber.

On May 3, 2004, B&B Mechanic J. Szczvroski returned from a leave of absence and bumped the Claimant from his B&B position on Gang I-363. The Claimant, who was senior to Mack, immediately attempted to bump Mack from his position as a Plumber on B&B Gang I-052. The Carrier did not permit Claimant to bump Mack and this claim followed.

Rule 21 provides:

**"RULE 21 RETURNING FROM FURLOUGH**

\* \* \*

New positions filled by recalled employees will be advertised on the first Monday after five days from the date such employees start work on such positions. Such advertisements will be made in accordance with the procedure in Rule 3.

If such positions are not advertised on the first Monday thereafter, then employees in active service may exercise seniority to displace

newly recalled employees, provided they notify their current supervisory officer or foreman not less than 24 hours in advance of their current starting time.”

\* \* \*

Whether Mack was working as a Trackman or simply not working, immediately prior to May 3, 2004, Mack was nevertheless on furlough from the B&B Department. Mack was recalled to the B&B Department effective that date to a new Plumber’s position in the B&B Department. Under Rule 21, the Carrier was not obligated to advertise that position until “. . . the first Monday after five days from the date such employees start work on such positions.” And, if not advertised after five days, it was at that time under Rule 21 that “. . . employees in active service may exercise seniority to displace newly recalled employees. . . .”

Because of Rule 21, the Organization has not shown that the Claimant had the right to exercise his greater seniority to displace junior Plumber Mack on the day that Mack started the new position in the B&B Department after Mack was recalled from furlough to the B&B Department - i.e., May 3, 2004. Under these facts and under the language in Rule 21, the Claimant’s right to bump Mack did not exist until May 10, 2004, assuming that the Carrier did not advertise the position by that date.

With respect to the Organization’s argument that Mack was not recalled to a “new” Plumber’s position, thereby rendering Rule 21 inapplicable, at best, the facts are in dispute as to whether that position was “new.” The burden is on the Organization to prove from the correspondence on the property that the position was not new. That burden has not been met sufficient to rebut the Carrier’s assertion that the Plumber’s position Mack assumed on May 3, 2004 was “new” and thus protected under Rule 21.

Based on the above, the Organization has not carried its burden. The claim will therefore be denied. In light of that finding, the Carrier’s procedural argument need not be addressed.

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**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 18th day of May 2007.