

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42808  
Docket No. MW-43212  
17-3-NRAB-00003-150465**

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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 Agreement was violated when the Carrier assigned junior employe J. Wilkens to the position of EWE 'B' Tilt Car Operator on Gang Y802 beginning on February 3, 2014 instead of assigning senior employe M. Alexandre thereto (Carrier's File NEC-BMWE-SD-5303 AMT).**
- (2) As a consequence of the above-stated violation, Claimant M. Alexandre shall be allowed ... the difference in pay rate from an EWE "B" to his current pay rate of Trackman, plus all incentives and per diems entitled to position # 001-SE-0114, for all hours worked in said position by Mr. Jamal Wilkins or any other employee working in said position that has a lower EWE Seniority Ranking than the Claimant.”**

**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.

Michael Alexandre, the Claimant herein, has established and holds seniority in the Carrier's Maintenance of Way and Department. During the relevant time period associated with this dispute, the Claimant was assigned as a Trackman in Gang 5074, headquarters listed as Variable, Best Western, Groton, CT, with a tour of duty from 8:00 P.M. to 6:00 A.M. Monday through Thursday and rest days of Friday, Saturday, and Sunday. The Claimant has a seniority date of December 14, 1997 as an EWE on the Northern District EWE/Machine Operator Roster and the Rule 89 Bid/Displacement List.

J. Wilkins was assigned as an EWE "B" (Tilt Car) in Gang Y802, headquarters listed as Variable, South Plainfield, NJ, with a tour of duty from 6:00 A.M. to 4:30 P.M. Monday through Thursday and rest days of Friday, Saturday, and Sunday. Mr. Wilkins has a seniority date of May 23, 2011 as an EWE on the Southern District EWE/Machine Operator Roster and the Rule 89 Bid/Displacement List.

The record reflects that Mr. Wilkins began a leave of absence on November 6, 2013. Subsequently, by advertisement no. 001-SES-0114, dated January 13, 2014, the Carrier advertised Mr. Wilkin's EWE "B" (Tilt Car) position in Gang Y802. The Claimant was among the applicants who submitted bids for the position. The advertisement closed on January 20, 2014. By award dated January 28, 2014, the Claimant was awarded the position, subject to training, with a position effective date of February 3, 2014. On January 29, 2014, Mr. Wilkins issued his intent to return to work from his leave of absence to his position as an EWE "B" (Tilt Car) in Gang Y802. The Carrier took the position that inasmuch as the position was no longer available to Claimant, due to Mr. Wilkin's intent to return to work, the Carrier cancelled the awarding of the position to the

**Claimant.** On April 21, 2014, Claimant was awarded a EWE "B" (Tilt Car) position in Gang Y802.

By letter dated February 24, 2014, the Organization submitted a claim alleging violations of Rules 1, 3, and 22 of the parties' Collective Bargaining Agreement. By letter dated April 21, 2014, D.L. Karczeski, Superintendent Engineering Production at that time, denied the claim. Thereafter, the Organization appealed the denial by letter dated May 16, 2013. The Carrier denied the appeal by letter dated June 30, 2014. The Organization appealed to the Director of Labor Relations by letter dated August 7, 2014. Following conference held on November 17, 2014, Sharon Jindal, Senior Manager — Labor Relations, denied the appeal by letter dated January 16, 2015.

The Organization filed its notice of intent to file a submission with the Third Division on July 17, 2015. By letter dated July 24, 2015, the National Railroad Adjustment Board advised the Carrier that the Organization had filed its notice of intent.

Boiled down to its basic elements, it is the Carrier's position that the "effective date" of the awarded position, February 3, 2014, is controlling, while the Organization maintains that the position at issue belonged to the Claimant at the moment it was awarded to him on January 28, 2014. Therefore, it is the Carrier's position that when Mr. Wilkens made his intent to return to his position clear on January 29, 2014, Rule 22 permitted his return since his position was neither abolished nor filled by a more senior employee.

Following our review of the record, the Board finds that it is the effective date of the position that is controlling. In this regard, a review of Claimant's position history shows that the effective date of the award for the EWE "B" (Tilt Car) position in question was indeed February 3, 2014. In addition, it reflects that until February 3, 2014 (including between Mr. Wilkins' return and February 3, 2014), the Claimant was considered to be filling a vacancy in Gang 8074, and therefore cannot be considered to have also been an EWE "B" (Tilt Car) in Gang Y802 simultaneously. In addition, and significantly, the record reflects that position history for Claimant has been organized by the effective date of each position, and not by award date. It is therefore clear that it is the Carrier's

practice to utilize a position's effective date rather than award date to determine when a position is filled. This is a rational way to assess when a position has been filled. As noted in the Carrier's submission, assuming the Organization's proposed method of using award date, an employee could conceivably hold two positions simultaneously (current position and awarded position that has not yet started) and only be working one of them. It is also worth noting that in order to gain seniority on a roster, an employee must actually start working a position, and not simply be awarded a position and never work it. Therefore, in the instant case, the fact that Mr. Wilkins returned from leave prior to his position being filled, i.e., the effective date of the awarded position, he had every right to return to it under Rule 22. As a result of this determination, the instant claim will 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 28th day of November 2017.