

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43063  
Docket No. MW-43879  
18-3-NRAB-00003-160662**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (Amtrak) -  
(Northeast Corridor**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to allow Mr. W. Steel to work his truck driver position at Battle Creek, Michigan beginning January 20, 2015 and continuing (Carrier’s File BMW-588 NRP).**
- (2) The claim as appealed by Second Vice Chairman J. Bainter on June 16, 2015 to Manager Labor Relations V. Guilian shall be allowed as presented because it was not disallowed by Manager Labor Relations V. Guilian in accordance with Rule 14.**
- (3) As a consequence of the violations referred to in Parts (1) and/or 2 above, Claimant W. Steel must be compensated for any and all straight time and overtime hours, at the Truck Drive B straight and overtime rate of pay, worked by Matthew Wilson beginning January 20, 2015 and continuing until such time as the Claimant is allowed to return to the position in question.”**

**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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the Agreement when on January 20, 2015, the Carrier removed the Claimant from a truck driver position that he had been awarded effective January 16, 2016, and worked on January 19, 2016, on the ground that the Claimant should not have been allowed to bid on the position while on furlough status, and then awarded the position to a junior employee. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to timely disallow the claim, because the Carrier violated the Agreement when it failed to allow the Claimant to exercise his seniority and to work his awarded truck driver position beginning on January 20, 2015, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Agreement does not permit a furloughed employee to return to service by bidding on an advertised position and being awarded that position, because the position was awarded to the Claimant in error, because the Carrier properly awarded the position to the junior employee who was entitled to the position, because the Carrier timely disallowed the appeal, because the Organization failed to meet its burden of proof, and because the requested remedy is inappropriate.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the

Agreement when it failed to allow the Claimant to work his truck driver position at Battle Creek, Michigan, in January of 2015. Therefore, this claim must be denied.

The record reveals that on December 31, 2014, the Claimant accepted a furlough after his position had been abolished. The Claimant failed to exercise seniority under Rule 8. A week later, the Carrier issued an advertisement for another position of truck driver in Battle Creek, Michigan. The Claimant was awarded the position, apparently in error, on January 15, 2015. The Carrier prevented the Claimant from working the position starting on January 20, 2015, and eventually awarded it to a junior employee named Wilson. The reason for the Carrier's action is that it is Rule 13 and not Rule 8 that deals with employees returning from furlough. There is no question that there was no recall by the Carrier in this case, nor was there a junior employee who was awarded the new position or recalled. Wilson, the junior truck driver, was merely awarded a vacancy and was not awarded a new position. Consequently, none of the conditions existed under Rule 13 for the Claimant to return from furlough and obtain that position at issue.

The Organization argues that Rule 8 applies, but that simply does not apply to furloughed employees. Rule 8 deals with employees who are actively working when their position is abolished.

It is fundamental that the Organization bears the burden of proof in cases of this kind. Since the Organization failed to meet that burden in this case, the Board has no choice other than to deny the claim.

**AWARD**

**Claim denied.**

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**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 2nd day of May 2018.**