

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43332
Docket No. MW-44283
19-3-NRAB-00003-170360**

The Third Division consisted of the regular members and in addition Referee Mark L. Burdette when award was rendered.

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

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior employee J. Littlefield to perform Maintenance of Way Department track work at the Waterfield, Maine facility and in Rigby Yard in Portland, Maine beginning on June 10, 2015 and continuing, instead of assigning Claimant K. Fleury (Carrier's File MW-15-40 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Fleury shall now be compensated for all straight time and overtime hours worked and accrued by junior employee J. Littlefield during the claim period.”**

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. Fleury has established and holds seniority as a trackman in the Carrier's Track Sub-Department and holds a seniority date of June 11, 2010 with a seniority rank of one hundred thirty-nine (139) on Seniority Zone 3 which includes Waterville, ME. At the time of this dispute, he was furloughed.

Employee J. Littlefield has also established and holds seniority as a trackman in the Carrier's Track Sub-Department and holds a seniority date of July 23, 2013 with a seniority rank of one hundred ninety-six (196) on Seniority Zone 3.

There is no dispute that the Claimant holds superior seniority as a trackman within Seniority Zone 3 over employee Littlefield. Nor is there any dispute that the Claimant received a return to work physical examination on May 28, 2015.

On June 10, 2015 and continuing, the Carrier assigned junior employee Littlefield to perform track work at the Waterville, Maine facility and in Rigby Yard in Portland, Maine. During the improper assignments, the junior employee accrued straight time hours and corresponding overtime while the Claimant, who is undisputedly senior, continued to remain furloughed awaiting medical clearance. At no point was the Claimant offered the disputed work.

Relevant Contract Provisions

Article 4. Seniority

4.1 Seniority Date

- (a) As provided for in Article 5 and 6 of this Agreement, Employees may establish seniority in various classes on various rosters. Unless otherwise provided, qualified employees may utilize their seniority in any direction and prior requirements to exercise seniority in the highest class, the same class, or the same sub-department are deleted.

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4.3 Seniority Zones

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- (b) **System Seniority Zones Employees without prior rights and Prior Rights Employees without Divisional prior rights will place themselves in a system seniority zone as designated on the map attached hereto and will not be required to protect their seniority outside their system seniority zone. System seniority zones will be listed on seniority rosters and the Carrier will not force assign such employees outside their system seniority zone.**

* * *

Article 8. Filing Vacant Positions

- 8.1 In the assignment of employees to positions under this Agreement, qualification being sufficient seniority shall govern.**

- 8.2 The word 'seniority' as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority roster.**

8.3

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- (d) **Vacant positions will be awarded to the senior qualified employee bidding for same, except that an employee will not be awarded a position that he has vacated during the previous bid cycle, unless he has been displaced, his position has been abolished or there are no other bidders for the vacated position. Notices of positions awarded will be posted on the Friday following the closing date specified on the advertisement. Employees currently in service who are awarded positions will occupy those positions on the next scheduled workday following the notice of the award. Employees currently furloughed who are awarded permanent positions will occupy those positions within ten (10) days from the date notified of award by certified**

mail to the last recorded address. Failure to return will result in forfeiture of all seniority under this Agreement unless satisfactory evidence is furnished that failure to return was due to conditions beyond the employees' control. Copy of the above notification will be furnished to the Duly Accredited Representative.

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Article 10. Overtime

10.1 Time worked preceding or following and continuous with a regularly assigned work period shall be computed on the actual minute basis and paid for at the time and one-half rate, with double time on an actual minute basis after sixteen (16) hours of work in any twenty-four (24) hour period (computed from the starting time of the employee's regular shift), except that overtime shall automatically cease and the pro rata rate shall apply at the starting time of the employee's next regular assigned work period.

Claimant Fleury was in furlough status, and awaiting clearance. He took a return to work physical on April 29, 2015. He was offered a position on May 8, 2015, which he declined because it was for just a week. He was again offered another available job on that same date, and declined, telling the personnel officer that he wanted to wait for a good job to bid on. Having not returned, the Claimant was required to take a second return to work physical on May 28, 2015. The Organization states these facts to be irrelevant as the claim period is for June 10, 2015 to June 22.

Mr. Littlefield bid on a job on May 20, 2015 to cover a position outside of his zone, to be covered on June 1, 2015. He held that position until June 29, 2015 when he was awarded a Trackman position in Waterville. Claimant Fleury was not medically cleared for duty on May 20, 2015, and therefore could not have held that position, even though he was senior to Littlefield.

Claimant Fleury went through the standard return to work process, taking his second physical on May 28, 2015. The results were processed in the normal fashion and time, with HR notifying Track on June 16, 2015 that the Claimant was medically

cleared. The Claimant was then scheduled for the required Roadway Work and Safety review class on June 23, 2015, and commenced working shortly thereafter.

Since Claimant Fleury was not qualified to occupy the position bid by Littlefield, as he had not completed the return to work requirements, there is no violation of the seniority provisions of the Agreement.

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 14th day of December 2018.