

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43622  
Docket No. MW-44697  
19-3-NRAB-00003-180226**

**The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Indiana Harbor Belt Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier withheld Mr. C. Young from service beginning on December 14, 2015 and continuing following his recall to a trackman position (System File 2016-001 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Young now ‘... be allowed to return to work and compensated all straight time and overtime hours lost beginning December 14, 2015 and until allowed to return to service at the appropriate Trackman straight and overtime rates of pay. In addition to the mentioned remedy we also request that the Claimant be compensated the negotiated \$15,000 of return to service bonus compensation. \*\*\*”**

**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.

On January 5, 2016, the Organization filed a claim asserting that the Carrier violated Rule 4 of the parties' Agreement when it denied the Claimant, C.J. Young, the opportunity to return to service following a recall from a furlough. It argues that the Claimant received the notice of the recall on December 4, 2015 and appeared for work on December 14, which was within ten days, as required by Rule 4. The claim was progressed on the property in the usual and customary manner, including placement before the highest officer of the Carrier designated to handle such matters. Following a conference regarding the claim on February 8, 2017 and the Carrier's denial of the claim, dated March 7, 2017, the Organization filed its notice of intent with the Third Division on December 6, 2017. The claim is now properly before the Board for adjudication.

**Relevant Contract Provisions**

**RULE 24 – CLAIMS AND GRIEVANCES**, in pertinent part, reads as follows:

- “(b) . . . When claim or grievance is not allowed, the Director of Labor Relations will so notify, in writing, whoever listed the claim or grievance (employee or his union representative [sic] within sixty (60) days after the date the claim or grievance was discussed of the reason thereof. When not so notified, the claim will be allowed.
- (c) A claim or grievance denied in accordance with paragraph (b) will be considered closed unless within nine (9) months from the date of the decision of the Director of Labor Relations proceedings are instituted before the National Railroad Adjustment Board or such other Board as may be legally substituted therefore under the Railway Labor Act.”

## **RULE 4 – SENIORITY**

### **Section 3. Return to service**

**“An employee not in service will be subject to return to work from furlough in seniority order in any class in which he holds seniority. If he fails to return to service within ten (10) days from date notified by certified mail to his last recorded address for a position or vacancy of thirty (30) days or more duration, he will forfeit seniority only in the district and class recalled to under this Agreement. Forfeiture of seniority under this paragraph will not apply when an employee furnished satisfactory evidence to the officer signatory to notification that failure to respond within ten (10) days was due to conditions beyond his control. Copy of recall letter shall be furnished the designated union representative.”**

**ARTICLE VII, JULY 6, 1992 AGREEMENT, in pertinent part, reads:**

**“(c) Any employee acquiring Track Seniority subsequent to the date of this Agreement shall be placed on the bottom of both the IHB and Gibson seniority rosters and be identified as a system employee.”**

**APPENDIX L, paragraph (3), dated November 13, 2015, in pertinent part, reads:**

**“3. Carrier employees represented by the BMWED who do not accept the opportunity to return to active duty from furlough shall be deemed to have failed recall and shall be removed from the appropriate BMWED rosters in accordance with Rule 4 of the Working Agreement.”**

**The Board first addresses the Carrier’s claim of procedural error. It alleges that the claim was not filed in accordance with Rule 24 (c) and therefore, must be dismissed. The record conclusively establishes that the Notice of Intent from the Organization to the National Railroad Adjustment Board (“NRAB”) is dated December 6, 2017, which is within 9 months of the Director of Labor Relations’ denial of the appeal, dated March 7, 2017.**

**On April 18, 2016, the Organization made a timely written request to discuss**

the matter. The record indicates that a conference was held on February 8, 2017. The Carrier's decision of March 7, 2017 was held within 60 days as required by Rule 24(c). As such, the Organization's filing for arbitration on December 6, 2017 was timely.

Moving to the merits we find that upon a careful review of the record the Organization has not met its burden of proof that the Carrier violated the Agreement. Nothing in the record supports a finding that the Claimant reported to work within ten days of the recall notice he received on December 4, 2015. The Claimant failed to properly respond to the Carrier as required by Rule 4. As such, the Claimant forfeited his seniority as required by paragraph (3) of Appendix L.

**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 17th day of May 2019.**