

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43623
Docket No. MW-44698
19-3-NRAB-00003-180227**

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

**(Brotherhood of Maintenance of Way Employees 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 failed to assign senior Backhoe Operator D. Przespolewski to a backhoe operator position advertised by Bulletin Number G-16 dated August 23, 2016 and instead assigned junior employee R. Vander Meer thereto beginning on August 31, 2016 and continuing (System File 2016-033 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Przespolewski shall now ‘... be compensated all straight and overtime hours worked by R. Vander Meer, beginning August 31, 2016 and continuing until such time Mr. Przespolewski is returned to service for the Carrier and is rightfully placed on the Backhoe Operator position at Gibson.’”**

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 September 20, 2016, the Organization filed a claim asserting that the Carrier violated Rule 3 of the parties' Agreement when it failed to assign the Claimant, David Przespolewski, to a backhoe operator position and awarded the job to an employee with less seniority. It argues that the Carrier erred when it determined the Claimant forfeited his seniority by not responding to a notice sent on November 30, 2015 recalling him from a furlough. The Organization maintained that the Claimant retained seniority rights as a backhoe operator since the recall notice pertained to his trackman position.

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 22, 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 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 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.”

Upon a careful review of the record we find that the Organization has not met its burden of proof that the Carrier violated the Agreement. The record indicates the Claimant failed to respond to the recall notice of November 30, 2015 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.