

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43624  
Docket No. MW-44699  
19-3-NRAB-00003-180228**

**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 failed to assign senior Vehicle Operator C. Young to a vehicle operator position advertised by Bulletin Number G-23, dated September 13, 2016 and instead assigned junior employee M. Donnahue thereto beginning on September 26, 2016 and continuing (System File 2016-034 IHB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Young shall now ‘... be compensated all straight and overtime hours worked by M. Donnahue, beginning September 26, 2016 and continuing until such time Claimant Young is returned to service for the Carrier and is rightfully placed in the Vehicle 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 November 11, 2016, the Organization filed a claim asserting that the Carrier violated Rule 3 of the parties' Agreement when it failed to assign the Claimant, C. J. Young, to a vehicle operator position and awarded the job to an employee with less seniority. It argues that the Carrier erred in claiming that the Claimant forfeited his seniority as a trackman by not responding to a notice sent on November 30, 2015 recalling him from a furlough. The Organization maintains that even if the Board were to find that he did, the Claimant retained his seniority rights as a vehicle operator since the recall notice pertained to the 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 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 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.”**

**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. In our Award 00003-180226, the Board found that the Claimant failed to respond to the recall as required by Rule 4. As such, the Claimant forfeited his seniority as required by paragraph (3) of Appendix L. Nothing in the record here alters our previous findings.**

**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.**