Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 43767
Docket No. MW-42562
19-3-NRAB-00003-140207

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division - (IBT Rail Conference
(Union Pacific Railroad Company (former Chicago and North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Track Foreman A. Jass to operate the cold air blower truck to remove snow from switches, tracks and rights of way at various locations in the Des Moines, Iowa area including at Shortline Yard and Hull Avenue Yard beginning on February 25 through and including March 1, 2013 instead of recalling and assigning furloughed employe A. Niemeyer thereto (System File B-1314C-104/1581907 CNW).

(2) The Agreement was further violated when former Director Labor Relations P. Jeyaram failed to disallow the claim appealed by General Chairman L. Below under date of May 21, 2013, as required by Rule 21.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant A. Niemeyer shall ' ... be compensated for *Forty (40) hours of straight and four (4) hours at overtime rate,* as shown earlier in the claim, at the applicable foreman Class 3 rate of pay.'" (Emphasis in original.)

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.

At the time this dispute arose, the Claimant held seniority as a Class III Roadway Equipment Operator (system machine operator) within the Maintenance of Way Department. He was on furlough status and available to work as an extra and as a relief employee. On Monday, February 25, 2013, a vacancy occurred when another System Machine Operator was absent due to scheduled vacation. Instead of recalling the Claimant, who held the applicable seniority and was qualified to operate a snow blower, the Carrier assigned a Track Foreman, A. Jass, headquartered in Des Moines, Iowa. Jass operated the cold air blower, which is used to remove snow from switches, on the Shoreline Subdivision, the Hull Avenue Yard and the surrounding Des Moines area from February 25 through March 1, 2013. He worked forty hours at straight time and four hours' overtime.

The Organization raised a threshold procedural issue, that the Claim should be sustained under Rule 21 because the Carrier's Director of Labor Relations failed to respond to the Organization's final appeal within sixty days. Regarding the merits of the Claim, Rules 1, 3, and 4, which establish seniority under the Agreement, have been interpreted to apply to *all* positions, even if the work is only overtime service or temporary work. There is no dispute that the Claimant held seniority as a system machine operator and was qualified to operate a Cold Air Snow Blower. The individual assigned to operate the Blower was a foreman, a separate and distinct job classification. Rule 14 provides that furloughed employees will be called in seniority order for extra and relief work, first in the applicable zone and second in the applicable seniority district. The work at issue was extra and relief work, and the Carrier was contractually obligated to recall the Claimant and assign him to perform it.

The Carrier objects to the procedural argument raised by the Organization. The parties held a conference on the claim on September 25, 2013. The Carrier's notes from that meeting state: "Carrier provided documentation showing appeal response uploaded to LCS system. Agreed to handle on the merits." As for the merits of the case, the Organization misinterpreted Rule 14.D, which must be read in conjunction with Rule 14.C, under which the Carrier has the right to recall furloughed employees to perform extra work, but is not required to do so. Rule 14.D merely establishes how employees are to be called in to work; it does not require the Carrier to call them in.

Rule 21(A) states, in relevant part:

> **"… If any such claim or grievance is disallowed, the Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for the disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."**

If the Carrier failed to respond as the Organization contends, the Claim would need to be sustained. However, the record includes evidence of an agreement between the parties reached during conference in September 2013 to handle the case on the merits, after the Carrier provided proof that its response had been uploaded into the on-line Labor Claim System on July 2013 and provided a copy to the Organization. In light of that agreement, the Organization's procedural argument is denied.

Analyzing the merits of the Claim requires an examination of Rule 14, Recall of Forces, which states, in relevant part:

> **". . . . .**
> **C. The Company shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during the absence of regular occupants.**
>
> **D. Furloughed employees shall be called in seniority order for extra and relief work. First in the applicable zone and second in the applicable seniority district. Furloughed employees, for purposes of this rule, do not include employees holding displacement rights; however, this shall not preclude such an employee from exercising seniority over junior**

employees performing extra work and such exercise of seniority shall not extend or otherwise affect any displacement rights held. Junior employees cannot be displaced during the course of a day's work.
. . . . . "

It is a fundamental principle of contract interpretation that the provisions of a contract must be read in conjunction with one another and that they be interpreted so as to harmonize with one another as well. Rule 14.D cannot be read in a vacuum; it must be read and understood in the context of Rule 14.C. Rule 14.C states that "The Company *shall have the right to use* furloughed employees to perform extra work and relief work." (Emphasis added.) That language gives the Carrier *permission* to use furloughed employees for that purpose, but it does not *require* the Carrier to recall furloughed employees to perform extra work (such as "The Company *must use* furloughed employees…"). The Foreman who was assigned to fill in for the Machine Operator who was on vacation was qualified to operate the Cold Air Snow Blower and the Company was within its rights to assign him to do so.[1]

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 16th day of July 2019.

[1] **The Carrier made an "emergency" argument that the Board will not address, as there is no evidence in the record to support the existence of an emergency.**