

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44101
Docket No. MW-43005
20-3-NRAB-00003-190354**

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

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier furloughed Messrs. B. Shepley, E. Matlock and M. Jackson on October 24, 2013 while junior trainee J. Williams was allowed to remain working (System File 0001213/1596692 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants ‘... should be compensated for their lost time. Mr. Shepley and Mr. Jackson were furloughed from October 24, 2013 through November 22, 2013 for a total of twenty one (21) days each. Mr. Matlock was furloughed from October 21, 2013 through November 03, 2013 and from November 08, 2013 through November 15, 2013 for a total of fifteen (15) days. ***”**

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.

Claimants B. Shepley, E. Matlock and M. Jackson (Claimants) established and held seniority within the Carrier's Maintenance of Way Department. The Claimants were working regularly assigned positions prior to being furloughed on October 24, 2013.

On October 21, 2013, the Carrier hired employe J. Williams, into a trainee position. On October 24, 2013, the Claimants were furloughed from their regularly assigned positions, despite the fact that Trainee Williams remained working. On November 21, 2013, General Chairman Cartwright became aware of the incident and contacted Mr. McClure in Labor Relations. Mr. McClure subsequently contacted Track Supervisor Knutson who confirmed that the Claimants had been furloughed despite the fact that a trainee continued to work. The Claimants were subsequently allowed to return to work from November 25, 2013 to December 9, 2013, at which time the three (3) Claimants and the trainee were furloughed. According to the Organization, Claimants Shepley and Jackson were improperly furloughed from October 24, 2013 through November 22, 2013. Claimant Matlock was improperly furloughed from October 21, 2013 through November 8, 2013 and from November 8 through November 15, 2013.

The Organization filed a timely claim on behalf the Claimants. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

At issue is whether the Carrier violated the Trainee Agreement by allowing a Trainee to perform work while the Claimants were furloughed. The Trainee Agreement provides clear instruction that the parties will confer in the event an employee with

seniority rights in the applicable agreement is furloughed while a newly hired employee is occupying a trainee position. The relevant language states:

“If a regularly assigned employee would otherwise furlough and a newly hired employee is occupying a Trainee position at a location where the regularly assigned employee possesses seniority rights, the Company and General Chairman *will confer* and determine how to keep the regularly assigned employee in compensated service so long as a new hire is occupying a Trainee position in that district/division.” (Emphasis added).

The record evidence reveals that once the Organization put the Carrier on notice of the issue, the parties conferred, and the Claimants were afforded the opportunity to work extra beginning on November 25, 2013. Since the Trainee Agreement is ambiguous as to who is to initiate the discussion regarding trainees working where an employee has been furloughed, the Organization failed to establish that the Carrier violated the Agreement. Accordingly, the claim must be denied.

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 11th day of August 2020.

LABOR MEMBER'S DISSENT
TO
AWARD 44101, DOCKET MW-43005
(Referee J. Charles)

In this case, the Board improperly required the Organization to put the Carrier on notice of its requirement to comply with the Trainee Agreement prior to enforcing its clear terms. Specifically, the Board held:

“The record evidence reveals that once the Organization put the Carrier on notice of the issue, the parties conferred, and the Claimants were afforded the opportunity to work extra beginning on November 25, 2013. Since the Trainee Agreement is ambiguous as to who is to initiate the discussion regarding trainees working where an employee has been furloughed, the Organization failed to establish that the Carrier violated the Agreement. Accordingly, the claim must be denied.”

This holding is contrary to the language and intent of the Trainee Agreement, which states, in relevant part:

“If a regularly assigned employee would otherwise furlough and a newly hired employee is occupying a Trainee position at a location where the regularly assigned employee possesses seniority rights, the Company and General Chairman will confer and determine how to keep the regularly assigned employee in compensated service so long as a new hire is occupying a Trainee position.”

The above-quoted language clearly contemplates that prior to an employee being furloughed, while a trainee remains in service, the parties must confer and determine how to keep the senior employee in service. Notwithstanding, the Majority held that the Carrier is allowed to furlough an employee and only has to confer with the Organization to keep him or her in service once requested by the Organization. This creates an issue especially in light of the fact that the Carrier is the party that maintains all relevant records, which would indicate a violation of this Agreement. In this case, the Carrier furloughed the Claimants for nearly a month while a trainee worked without holding a conference as is explicitly required by the Trainee Agreement. In this instant dispute, nearly a month had passed before the General Chairman became aware of the violation. Upon receiving information of the Agreement violation, the General Chairman immediately requested a conference. After the conference was held, the Carrier returned the Claimants to work the next day. This Board has essentially allowed the Carrier to furlough senior employees while junior employees working as trainees are allowed to remain fully employed so long as the Carrier can sneak it by the Organization. Essentially, this award authorizes an Agreement violation to continue as long as the Carrier returns the senior employees to work after the Organization catches the violation, without awarding a remedy. This is clearly not what the Trainee Agreement requires.

For these reasons, I must respectfully dissent.

Labor Member's Dissent
Award 44101
Page 2

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Zach Voegel', written in a cursive style.

Zachary C. Voegel
Labor Member