

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44102  
Docket No. MW-43008  
20-3-NRAB-00003-190355**

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

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (Former C&NW)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier recalled and assigned junior employee J. Biver to perform extra work operating a Mark IV Tamper and when it assigned Foreman D. Dickey to perform work operating a ballast regulator on District T-2 at Eagle Grove, Iowa on November 11 through 15, 2013 instead of recalling and assigning senior furloughed employee D. Walker thereto (System File G-1414C-01/1597870).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Walker shall be compensated for forty (40) hours of straight time at the applicable rate of pay.**

**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.

Claimant D. Walker established and held seniority as a Class A and Class B Machine Operator and other classes within the Maintenance of Way Department. On November 8, 2013, the Claimant's position as a Class A Machine Operator on Seniority District T-2 was abolished. The Claimant was placed on furlough status. Commencing on November 11 through 15, 2013, extra work for a Class A and Class B Machine Operator position became available when an employee was needed to operate a Mark IV Tamper and ballast regulator machine on Seniority District T-2. The work was assigned to employees J. Biver and D. Dickey who were junior to the Claimant.

The Organization filed a timely claim on behalf the Claimant. On January 3, 2014, the Organization alleged that the Carrier violated, among other things, Rule 14D of the applicable Collective Bargaining Agreement. The Carrier denied the claim explaining that Rule 14D did not apply to the Claimant since he was not furloughed.

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 record evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it is 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.

In this case, the Organization has failed to provide any competent evidence that the Claimant was actually furloughed, thereby, triggering Rule 14D. Rule 14D states, "Furloughed employee shall be called in seniority order for extra and relief work. First in the applicable zone and second in the applicable seniority. Furloughed employees, for purposes of this rule, do not include employees holding displacement rights...." It is noted that the Claimant's position had been abolished effective the end of shift on November 8, 2013 and the time period cited (November 11 through 15, 2013) was well within the Claimant's 15-day displacement period before he would be considered as furloughed. The Carrier contends that this was not "extra work" and that the Claimant failed to bid the job. The Claimant was eligible to exercise displacement rights but did not do so. The Board finds no violation of Rule 14D, as claimed. Accordingly, the Organization has failed to meet its burden of proof that a violation of the Agreement has occurred.

**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 11<sup>th</sup> day of August 2020.