

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44537
Docket No. 45817
22-3-NRAB-00003-200136

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: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe N. Tibbetts to perform trackman duties in the Waterville Yard April 9, 2018 through April 23, 2018 instead of calling and assigning furloughed employe M. Denham thereto (Carrier’s File MW-18-28 STR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Denham shall now be compensated for forty (40) hours at the straight time 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 M. Denham has established and holds seniority within the Carrier's Maintenance of Way Department. The Claimant was assigned as a trackman in the Track Sub-Department at the time of this dispute.

This claim is based on the proper application of Article 8 (Filling Vacant Positions) which, in pertinent part, provides:

8.1 In the assignment of employees to positions under this Agreement, qualification being sufficient seniority shall govern.

8.3 (b)...Furloughed employees will have the right to bid on any advertised positions and will be automatic bidders for advertised permanent positions for which they have seniority and are qualified in their working zones.

(d) Vacant positions will be awarded to the senior qualified employee bidding for same, except that an employee will not be awarded a position that he has vacated during the previous bid cycle, unless he has been displaced, his position has been abolished or there are no other bidders for the vacated position. Notices of positions awarded will be posted on the Friday following the closing date specified on the advertisement. Employees currently in service who are awarded positions will occupy those positions on the next scheduled work day following the notice of the award. Employees currently furloughed who are awarded permanent positions will occupy those "positions within ten (10) days from the date notified of award by certified mail to the last recorded address. Failure to return will result in forfeiture of all seniority under this Agreement unless satisfactory evidence is furnished that failure to return was due to conditions beyond the employees' control. Copy of the above notification will be furnished to the Duly Accredited Representative."

The record reflects that the Carrier was preparing for employees being called to return to service voluntarily and not as automatic bidders. At issue is whether the Carrier violated the Agreement when it assigned junior employe N. Tibbetts to perform various jobs in the Waterville Yard instead of recalling and assigning such work to the Claimant on April 9, 2018 through April 23, 2018. By letter dated May 21, 2018, the Organization filed a timely claim on behalf of the Claimant. The claim was properly handled by the Parties 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. After careful review of the record, the Board finds the Organization has not met its burden. The Board finds that the jobs at issue did not concern an open unawarded position in the Claimant's home zone. Therefore, Article 8 was inapplicable to the circumstances presented here. Accordingly, there is no evidence that the Carrier violated the Agreement.

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 8th day of October 2021.