

BEFORE PUBLIC LAW BOARD NO. 7050

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
GRAND TRUNK WESTERN RAILROAD**

Case No. 1

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier terminated Mr. P. Moore's trackman seniority and employment rights by letter dated March 19, 2003. (Carrier's File 8365-805).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. P. Moore shall now have his trackman seniority reinstated and he shall be compensated for any loss off wages, credits and benefits that resulted from this improper termination of said seniority."

FINDINGS:

At the time that this matter arose, the Claimant was furloughed from all classifications and was awaiting recall.

By letter dated February 20, 2003, the Claimant was instructed to undergo a return-to-work physical. By letter dated March 11, 2003, the Claimant was informed that he was being recalled from furlough status to fill a vacant welder position on the Production Support Gang. This letter further notified the Claimant that if he failed to return and perform compensated service on March 17, 2003, he would forfeit all seniority and employment rights with the Carrier. The Claimant failed to report for duty on March 17, 2003, as instructed. By letter dated March 19, 2003, the Claimant was notified that he had forfeited all his seniority, thereby terminating his employment. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to

terminate the Claimant's seniority. The Carrier denied the claim.

The Organization initially acknowledges that there is no dispute that the Carrier recalled the Claimant from furlough to a welder helper position and that the Claimant subsequently failed to report to said position. The Organization contends that rather than terminating the Claimant's seniority within the classification to which he had been recalled, as provided by the Agreement, the Carrier additionally and unjustifiably terminated the Claimant's seniority within the trackman classification, as well as all of the Claimant's employment rights. The Organization asserts that the Carrier's application of Rule 4, Section 3, simply is wrong in this case, and the Claimant therefore is entitled to the requested remedy.

The Organization then addresses the Carrier's position that because the Claimant failed recall in the welder helper classification, then under the terms of Rule 4, Section 3, the Claimant therefore forfeited seniority in all classifications on all seniority rosters, and thereby forfeited his employment rights with the Carrier. The Organization maintains that, contrary to the Carrier's novel and absurd application of Rule 4, Section 3, the Claimant's forfeiture of seniority under this provision was limited to the welder and welder helper seniority rosters. The Organization argues that because the trackman class does not appear on the same seniority roster as the welder class, the Claimant did not forfeit his seniority in the trackman classification.

The Organization insists that there can be no doubt that the trackman classification and the welder classifications have vastly differing job duties, with separate seniority rosters for each classification. The Organization points out that the final sentence of Rule

4, Section 3, states that when an employee fails recall to a classification, the employee “will forfeit seniority in the division and class\grade and lower classes as they appear on the seniority roster.” (emphasis added) The Organization argues that if it had been intended that an employee were to forfeit seniority in all classifications on all rosters, then the parties would have used the plural form “rosters,” instead of the singular form “roster.”

The Organization emphasizes that despite the Carrier’s contentions, the seniority rosters for trackmen and welders/welder helpers are not within the same group or class, and they unquestionably are separate and distinct seniority rosters. The Organization further asserts that the Carrier’s reference to training provided to employees for promotion to higher-rated positions simply is another red herring in that such training has nothing to do with the interpretation of Rule 4, Section 3, which governs the recall of forces. The Organization argues that the Carrier’s inclusion of the training issue in this matter is totally nonsensical and has no relation to the instant dispute.

The Organization contends that there simply is no language in Rule 4, Section 3, that provides for the Carrier to sever the employment rights of an employee under the circumstances at issue. Had the parties intended for Rule 4, Section 3, to be applied in such a manner, it would have been a simple matter to have included clear and precise wording such as that contained in Rule 4, Section 4, or in Rule 8(b). The Organization insists that it clearly was not the intent of either party that Rule 4, Section 3, be applied as the Carrier now contends. The Organization points out that the Carrier is attempting to have the Board rewrite the clear and unambiguous language of Rule 4, Section 3, by

adding exceptions not intended or contemplated when the rule was drafted and agreed to by both parties.

The Organization then argues that the Carrier's opinion as to why the Claimant failed recall absolutely has no relevance to the interpretation of Rule 4, Section 3, and this was a shameless, transparent, and unsubstantiated attempt by the Carrier to prejudice the reader. The Organization maintains that the Carrier's misapplication of this rule and the termination of the Claimant's trackman seniority and all employment rights was a violation of the parties' Agreement.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that the Organization has not substantiated its allegations that Rule 4 prevents the removal of all the seniority possessed by the Claimant within the Division Roster when he failed to accept the welder position on the Production Support Gang. The Carrier asserts that the Organization's case falls far below the level of probative evidence necessary to support its position. The Carrier argues that the Organization has done nothing more than allege that the Carrier violated the Agreement, but it provided no probative evidence that a violation had occurred. Because the Organization has failed to provide the requisite evidence, but instead has presented only allegations, the instant claim must be denied.

The Carrier emphasizes that the relevant portions of the Agreement generally are based on the "senior may, junior must" principle for working and furloughed employees. Specifically, a senior employee may elect not to apply for and/or fill a vacancy if the

position can be filled with a less senior employee. The Carrier points out that in such a case, the junior qualified employee must report for the higher class/grade position or forfeit seniority and employment rights within the company. The Carrier maintains that the Agreement provides one exception to this principle, and that occurs when a vacancy falls within an employee's designated "home territory." In this event, the Agreement requires that a senior "home territory" furloughed employee fill the vacant position. The Carrier insists that in either event, failure results in such employee forfeiting his or her seniority and employment rights with the company.

The Carrier contends that the Claimant's recall to fill a welder position in March 2003 clearly was subject to Rule 4, Section 3. The Carrier asserts that even if the Claimant had been recalled to a "home territory" position, which he was not, the first paragraph of Rule 4, Section 3, mandates that he forfeit all his "seniority in the division."

The Carrier goes on to argue that the Agreement provides employees with the opportunity to train for promotion to higher-rated positions. The Carrier provided costly and time-consuming training to employees for its higher grade/class positions. The Carrier insists that as a *quid pro quo* for the Carrier's investment in these employees, the parties agreed that employees who voluntarily apply for, train, and qualify for the higher grade/class positions must respond to calls to fill vacancies on such positions, or else they forfeit employment and seniority rights within the company.

The Carrier maintains that the Organization's current assertion that the Claimant's forfeiture of seniority was limited to the welder and welder helper seniority rosters would create a nonsensical revolving door for training. The Carrier points out that the

Organization's interpretation would allow a qualified furloughed employee to decline to fill a vacancy, forfeit a limited amount of seniority, and then expect the Carrier to provide retraining so as to allow that employee the opportunity to re-establish seniority. The Carrier argues that this represents a costly and time-consuming burden not required or contemplated by the Agreement. Moreover, this interpretation would completely unravel the "senior may, junior must" principle to fill vacancies so prevalent within the Agreement.

The Carrier asserts that it is obvious that acceptance of the Organization's position, in whole or in part, would significantly change Rules 2 and 4 of the Agreement, and would contradict the Agreement's clear, unambiguous, and self-executing language. The Carrier emphasizes that principles of contract interpretation long have mandated the rejection of proposed interpretations that would produce illogical results. Moreover, where Agreement language is clear and unambiguous, either party may seek enforcement. The Carrier insists that the Organization's interpretation would produce an absurd result clearly not contemplated by the parties. The Organization is attempting to gain through this proceeding what it could not at the bargaining table.

The Carrier then argues that even if the Organization had established the merits of its claim, which it has not, the Organization has failed to establish monetary damages to support the claim made. The Carrier asserts that the claim for any lost wages, credits, and benefits is excessive because the Claimant voluntarily elected not to return to work. The Carrier maintains that any claim for compensation therefore is invalid and unsupported.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the parties' agreement when it terminated the Claimant's trackman seniority and employment rights on March 19, 2003.

The record reveals that the Claimant received a letter dated March 11, 2003, in which he was informed that he was being recalled from furlough status to fill a vacant welder position. In that letter, he was told the following:

. . . in the event that you fail to return and perform compensated service on March 17, 2003, you will forfeit all seniority and employment rights with the company pursuant to the collective bargaining agreement.

The record is clear that the Claimant failed to report for duty as he was instructed to do on March 17, 2003.

The Claimant was subsequently advised that pursuant to the provisions of Rule 4, Section 3, he had forfeited all of his seniority and, thereby, his employment was terminated.

Rule 4, Section 3, provides that employees who fail to return to service within seven days will forfeit seniority in the division and the class/grade and lower classes as they appear on the roster. Consequently, when the Claimant failed to return from

furlough after he was recalled, he forfeited all seniority in the Chicago Division and in the class of welder and all lower classes, which included trackman, that appeared on the seniority roster. Consequently, the Claimant did not have any seniority to retain.

It is fundamental that the Organization bears the burden of proof in cases of this kind. This Board has found that the Organization has failed to meet that burden.

Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: Sept. 5, 2008



CARRIER MEMBER

DATED: Sept 5, 2008