Award No. 18
Docket No.18

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated Rule 4 of Article 3 when it failed and refused to permit Vauda Wayne Brown to return to his former seniority district as Bridge and Building Mechanic on Seniority District No. 4 and assigned a junior employee who held no seniority in the Bridge and Building Department.

2. Rule 3 of Article 5 was violated when the Carrier failed to make assignment within the prescribed time.

OPINION OF BOARD: The Claimant in this case, Vauda Wayne Brown, entered service of the Missouri-Kansas-Texas Railroad Company on April 11, 1966 as Bridge and Building Mechanic on Seniority District No. 4, and continued in that capacity until Friday, March 24, 1967 when his position was abolished. On that date he was advised by his Foreman L. N. Grossman, of a vacancy in the System Steel Bridge Gang which had been bulletined. Realizing that his position as Bridge and Building Mechanic on the Division Gang was to be abolished effective that day, Brown made application for the position on the System Steel Bridge Gang. Apparently anticipating that no bids would be received from persons holding seniority on the System Steel Bridge Gang, and in order to fill the vacancy pending the expiration of the bulletin period the Company told Brown to report for work in the Steel Bridge Gang on Monday, March 27, 1967. Brown reported as instructed and began work that day. As anticipated no bids were received and Brown was assigned the position on April 5, 1967, and established

seniority as a Second Class Steel Bridgeman on the Steel Bridge Gang Seniority District as of that date.

On February 20, 1968 a position of Bridge and Building Mechanic on the Division Bridge and Building Gang, Seniority District No. 4 was bulletined and Brown placed a bid for this position on February 28, 1968. Brown's bid was rejected and the position was assigned to Robert F. Hacker who entered service in the Track Department on March 13, 1968 as a new employee and held no seniority as a Bridge and Building Mechanic. The present claim was filed by the General Chairman on April 15, 1968.

The Company takes the position that Brown was furloughed on March 24, 1967 and that when he failed to file his name and address with the designated officers of the Carrier and the Brotherhood within 10 days thereafter as required by Article 3, Rule 11, his seniority as a Bridge and Building Mechanic on Seniority District No. 4 automatically terminated. It, therefore, contends that since Brown held no seniority on District No. 4 Carrier was free to fill the vacancy with a new employee and that Brown's rights were not violated.

The Organization contends that Brown's seniority on Division Bridge and Building Seniority District No. 4 did not terminate. It argues that Article 3, Rule 11 does not apply because Brown was never out of Carrier's service at any time, (having filled the vacancy in the Steel Bridge Gang on Monday the next work day) and could not be considered a furloughed employee. Therefore, it reasons that Brown was not required to file his name and address as provided in Rule 11. The Organization says that Brown was in fact merely transferred to the System Steel Gang as contemplated by Article 7, Rules 1 and 2 and was, therefore on leave of absence from Seniority

District No. 4, and had a contractual right to return to that District.

Article 3, Rule 11 reads:

> "Furloughed employees who desire to retain their seniority rights must, within ten (10) calendar days from the date furloughed, file their name and address in writing as follows: ....."
>
> . . . . . .

It then goes on to state that maintenance of way employees shall file their address with the Vice President - Personnel with copies to Division Engineer and General Chairman. The rule then states:

> "Failure to file address, advise of change of address or return to service within ten (10) calendar days after being so notified will forfeit all seniority rights . . . . . ."

It is undisputed that Brown did not file his name and address as required by Rule 11. Was he required to do so? If he was a furloughed employee the answer is yes. And after careful consideration of the facts and the various rules we conclude that he was furloughed. Article 6, Rule 2 defines furloughed employees. It says:

> Employees affected by force reduction who do not have sufficient seniority to displace a junior employee on their seniority district will be classified as furloughed employees subject to Rule 11 of Article 3.

Brown falls within this definition. He was affected by force reduction and was the junior employee on the Division Bridge and Building Gang, Seniority District No. 4 on March 24, 1967. There was no one for him to displace. Therefore, when his job was abolished he became classified as a furloughed employee. He recognized this as shown by the statement in his letter of March 23, 1968 where he refers to his "furlough". There he did not claim he was not furloughed but that Rule 11 did not apply because he was transferred to the Steel Bridge Gang without any loss of time.

We find no merit in the Organization's argument that Brown was transferred in service and protected by Article 3, Rule 17. That rule provides that "Employees temporarily transferred by the direction of management from one seniority district to another, or assigned to temporary service, may when released return to the position from which taken without loss of seniority." This rule has no application to the present case. Brown was not temporarily transferred from one seniority district to another or assigned to temporary service. His position on the Division Gang was abolished. There was no position to which to return. He was clearly furloughed. Similarly the Organization's suggestion that Brown was on leave of absence from his position as Bridge and Building Mechanic in the Division Gang while working on the Steel Bridge Gang, is also unsound. One cannot be on leave of absence from a position which no longer exists. In his letter of March 23, 1968 Brown acknowledged that he had been furloughed and made no reference to any leave of absence.

The Organization's case rests primarily on the theory that since Brown went to work immediately on another seniority district and lost no time the provisions of Article 3, Rule 11 are inapplicable to him, and he was therefore excused from filing his name and address. We cannot agree. Rule 11 contains no exception. It has no provision to the effect that if an employee affected by force reduction goes to work on another seniority district he will not be classified as a furloughed employee. Continuity of service with Carrier is, therefore, not relevant to the issue here.

The Organization has argued that since Brown was still on the pay roll the Company knew his address at all times and that it does not make sense to enforce the rule in this case. We agree that the rule is strict but it was written by the parties and intended to serve a purpose. We have no authority to make an exception to the

rule and must apply it as written. Under the clear and unambiguous terms of Article 6, Rule 2 Brown was a furloughed employee and under Article 3, Rule 11 the only way he could have retained his seniority on Seniority District No. 4 after his position was abolished was by filing his name and address in the manner stated therein. Since he failed to do this he forfeited his seniority on that district and Carrier was within its rights in rejecting his bid for the job of Bridge and Building Mechanic on Seniority District No. 4.

AWARD

The Claim is denied.

Public Law Board No. 76

Roy R. Ray
Neutral Member and Chairman

A. J. Cunningham
Employee Member

Fred R. Carroll
Carrier Member

Dallas, Texas
May 16, 1969