

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 63

System Docket No. BMWE-463

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's refusal to allow Claimant Kirby Sircher to cover a position awarded to him, was a violation of Rule 8 of the current Scheduled Agreement.

(b) Claimant Sircher shall be compensated for all lost wages, including overtime and other benefits such as Railroad Retirement credits which would accrue to him, during the claim period of April 29, 2002 and when the Crew was abolished at the end of October 2002.

FINDINGS

The Claimant entered furlough status on December 10, 2001. This followed the abolishment of his position on December 2, 2001 and his lack of sufficient seniority to displace another employee.

On April 17, 2002, the Carrier advertised five Trackman positions. While in furlough status, the Claimant bid on one of these positions and was awarded the position on April 29, 2002. The

Carrier then advised the Claimant that the position had been awarded "in error". Adding further to understandable confusion, the Carrier recalled from furlough an employee, senior to the Claimant, to a Truck Driver position; then "corrected" this placement; and assigned the recalled employee in the Trackman position on which the Claimant had bid.

The underlying issue here is whether, as the Organization contends, an employee on furlough is permitted to bid on an advertised position (and thereafter be assigned to the position if the bid is successful). The Carrier responds that neither Rule 8, Bulletin, Assignment and Displacement, nor Rule 13, Returning from Furlough, provides any basis for bidding by furloughed employees on vacancies.

The Board notes that Rule 13, Section 3, permits furloughed employees to displace junior employees "awarded" new positions or "recalled to service". These circumstances did not arise in the matter here under review.

As to whether Rule 8 permits bids by furloughed employees, this can hardly be the first time the question has arisen. The Carrier cites in support of its view Public Law Board 4259, Award No. 4, which involved similar if not identical circumstances. Here, however, the Board need not examine the question further, based on a determinative circumstance. This circumstance is that the advertised Trackmen positions were never filled and, some time after being advertised, were withdrawn. Thus, the claim for "wages [the Claimant] could have earned" is moot, since the position was

not occupied. In addition, the Organization's reference to the other furloughed employee is of no support to the Claimant, since that employee was senior to the Claimant; was recalled (even if in error) to a different position; and did not perform service in the advertised Trackman position.

A W A R D

Claim dismissed.


HERBERT L. MARX, Jr., Chairman and Neutral Member


B. A. WINTER, Employee Member


RACHELLE A. MIELE, Carrier Member

NEW YORK, NY

DATED: 12/2/03