

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
E. N. JACOBS, JR., CARRIER MEMBER
RICHARD A. LAU, ORGANIZATION MEMBER

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK SOUTHERN RAILWAY COMPANY

Award No. 60
Case No. 60

Date of Hearing - October 17, 1996
Date of Award - April 21, 1997

Statement of Claim:

1. The Agreement was violated when on February 17, 1994, the Carrier improperly removed Mr. T. E. Boston from his B&B apprentice position after he had obtained seniority in the B&B Department on October 18, 1993.
2. As a consequence of the violation referred to in Part 1 above, Mr. T. E. Boston shall be returned to his B&B position and he shall be paid forty (40) hours' pay at the appropriate straight time rate for each week he is improperly held from his B&B position.

FINDINGS:

Special Board of Adjustment No. 1049, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On May 18, 1992 Claimant commenced work as a Track Laborer. Sometime in 1993 he was furloughed from the Track Department. On October 18, 1993, Claimant was employed in Carrier's B&B Department. On February 17, 1994, Claimant was released from the B&B Department on the basis that he was not suitable for B&B work. The Organization filed a claim contending, *inter alia*, that: 1) Rules 2 and 4 of the Agreement covered the transfer of Claimant from one Department to another; 2) that he had established seniority in the B&B Department as of the date of transfer, after 60 days work in that Department; and, 3) that his release without charges and investigation was discipline in violation of Rule 40.

The Organization's several arguments are well placed. Carrier is not privileged to work a furloughed track employee in the B&B Department from October 18, 1993 through February 17, 1994, and then simply release him on the basis that his work was not satisfactory. It must follow the procedures provided in the Agreement in doing so. If Claimant were considered as a new hire, the Carrier would have had 60 days release him during his probationary period. After the expiration of 60 days he could only be released by following the procedures of the Agreement.

Claimant was not a new hire, he had already served his probationary period as a Track Laborer. However, he was not afforded the basic protection that new hires would receive after completing 60 days' work. In that Claimant had established seniority in the B&B Department, if Carrier felt that his work was not satisfactory it could only proceed under the Discipline Rule to remove him from the Department. Without proceeding under the Discipline Rule Carrier simply has no basis to tell an employee he will no longer be able to work a job his seniority entitles him to work. This is patently at odds with the Agreement, and nothing Carrier has said in its presentation to this Board alters this result.

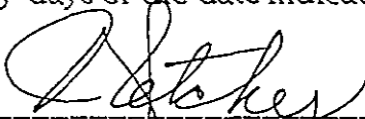
The claim will be sustained. Claimant is to be made whole for all wage losses sustained while he was available for service, less outside earnings and benefits received during the period he was able to work for Carrier, but did not because of the personnel action Carrier improperly took in this matter.

A W A R D

Claim sustained.

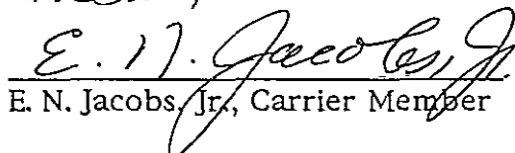
O R D E R

Carrier is directed to comply with this Award and make all payments due Claimant within thirty days of the date indicated below.




John C. Fletcher, Chairman & Neutral Member

I dissent



E. N. Jacobs, Jr., Carrier Member



Richard A. Lau, Employee Member

Dated at Mt. Prospect, Illinois., April 21, 1997