Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24147
Docket No. 43676
92-1-89-1-C-4459

The First Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and Northwestern Transportation Company

STATEMENT OF CLAIM:

"Firemen J. W. Jackson and R. P. King, Madison Division (Litchfield and Madison District) request that they be returned to the seniority roster in their proper place and be compensated for all time they may have lost by their improper removal from the roster on April 14, 1988 by local officers termination of claimants in letter dated June 13, 1988. Request is premised on BLE Article 17, Paragraph (c) of the Litchfield and Madison Agreement."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The operative facts are not in dispute. Claimants were firemen in furloughed status due to business decline. By certified letters dated January 25, 1988, Claimants were "recalled from furlough this date in Engine Service on the Eastern Seniority District #1, Chicago Zone." Claimants then successfully completed safety training, as well as book of rules and return to service physical examinations. On March 29, 1988, the Trainmaster instructed Claimants to report to the Chicago Zone within 48 hours and further explained that failure to so would be considered as insubordination. Thereafter, by letters of March 29 and April 8, 1988, Claimants declined to report to work explaining that the recall would force them to work approximately 300 miles from their home, and that as a result of the recall they were being improperly forced to work outside their working zone which is the Litchfield and Madison (L&M) District. By letters dated April 14, 1988, the Carrier notified Claimants that because they failed to return to service, they were dropped from the seniority roster and were terminated.

The Carrier argues that, as a result of Article 6 of the 1968 Merger Agreement, Claimants held seniority in Eastern Seniority District No. 1 and, under that Agreement, Claimants did not hold prior rights due to their hiring on after the effective date of the that Agreement. Under Article 6(a), Eastern Seniority District No. 1 covers:

> "Lines west from Chicago to Clinton, Oelwein, Freeport and Lake Geneva; Nelson to Madison; DeKalb to Spring Valley, St. Charles to Aurora; and the Staunton and Churchill Subdivisions."

Article 17(c) of the L&M Agreement provides:

> "When hired engineers, firemen or hostlers are laid off on account of reduction in service, they shall retain all seniority rights; provided they return to active service within 60 days from the date their services are required."

Therefore, according to the Carrier, because the Chicago Zone is in Eastern Seniority District No. 1, and because Claimants did not report to service as directed, the self-executing provisions of Article 17 deprive Claimants of continued seniority.

The Organization argues that Article 6 of the 1968 Merger Agreement relates solely to engineers and not to the craft of firemen. The Organization further argues that by the terms of the L&M Agreement and by actions of the Carrier in other recall situations where employees in the Chicago Zone who were junior to Claimants were called back to work while Claimants remain furloughed, the L&M District has been treated separately from other districts on the property.

We are unable to finally determine the merits of the dispute concerning the contractual geographic limits of recalls for fireman in the L&M District. One of the most fundamental concepts of labor relations is that if an employee is given an instruction, that instruction is to be followed and, if the validity of that instruction is to be challenged, that challenge comes through the subsequent invocation of the dispute resolution process - i.e., the employee must "obey now, grieve later." Claimants were clearly given instructions to report to the Chicago Zone. They clearly refused to comply with those instructions. Claimants' obligation was to report to the Chicago Zone and then file claims over the propriety of the recall. The recognized exceptions to the "obey now, grieve later" rule are not present in this case. The instructions to report to the Chicago Zone did not place Claimants in a position where their safety was in potential jeopardy or required Claimants to perform an unlawful act. Because of the conflicting arguments concerning which Agreement applies in this case, we cannot say that the instructions to report to the Chicago Zone were in flagrant disregard of the terms of the governing Agreement. Further, requiring Claimants to comply with the instructions and then grieve would not have mooted the dispute. If Claimants' position on the

scope of recall was correct, the dispute resolution process could have afforded all the relief necessary to make them whole for an erroneous recall. At best, there was a bona fide dispute as to whether they had to report to the Chicago Zone which, if ultimately shown to be an incorrect instruction, could have been remedied through the grievance process.

Claimants obligations to comply with given instructions and protest the propriety of those instructions later is clear. However, the status of this record as developed on the property on the question of whether the governing Agreement permits Claimants' recall to the Chicago Zone is not definitely clear. The arguments presented on both sides of the question are not insubstantial and the record is in conflict. Our concern in this matter is that although the dispute may be bona fide, ultimately we may be sanctioning the termination of seniority and employment under the terms of a self-executing contract provision that may not be applicable. In this case, that concern dictates the restoration of Claimants' seniority. However, because Claimants were obligated to comply with the instructions given to them and then grieve the propriety of those instructions, no backpay shall be required.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1992.