

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that unassigned assistant track foreman L. A. Kline, McCook Division, be paid the difference between what he earned as a section laborer and what he would have earned as a section foreman on October 1, 2, and 3, 1941, on the dates a section laborer was assigned to fill temporary vacancy of section foreman.

EMPLOYES' STATEMENT OF FACTS: There was a temporary vacancy in the position of Section Foreman at Orleans, Nebraska, McCook Division, from October 1st to 3rd, 1941 inclusive. Instead of calling and assigning L. A. Kline, the senior employee entitled to assignment on that temporary vacancy, the Carrier called and assigned a section laborer.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Here is a case where a regular Section Foreman laid off for a period of three days. Under the terms of agreement in effect that temporary vacancy was not subject to bulletin, but the senior available employee having preference to the assignment as Section Foreman should be assigned to serve during the period of that temporary vacancy. The Schedule Rules governing are Rules 22 and 27 reading:

"RULE 22: Other than as provided in Rule 9, an employee promoted from a lower to a higher rank will rank above an employee declining promotion. An employee accepting promotion will have priority in consideration for further promotion."

"RULE 27: New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining except that senior unassigned available employees in the seniority district will be given preference."

As will be observed, Rule 27 provides that new positions or vacancies of 30 days or less duration need not be bulletined, but that the senior unassigned available employee in the seniority district will be given preference. In order to determine the senior qualified employee entitled to such assignment, it is necessary to consider Rule 22 which provides that an employee promoted from a lower to a higher rank will rank above an employee who had declined pro-

There should be no need to point out that the preference under this rule extends only to those having seniority in the seniority district on the roster of the class of employes in which the vacancy exists. Otherwise, it would only be necessary to call attention to the fact that section laborer G. Thompson, who was left in charge of the section by his foreman, had a seniority date as section laborer as of May 16, 1923, while the claimant's seniority date as section laborer was May 5, 1925. Furthermore, neither of them was unassigned.

The last handling of this case on the property was on October 16, 1942, on which date the Management last wrote the General Chairman concerning it. No response to that letter having been received, it was presumed that the case was dropped for lack of merit.

It is the position of the Management:

1. That application of Rule 27 contemplates normal situations in which vacancies can be filled by giving preference to the **senior unassigned available** employes;
2. That the circumstances in this case were so unusual as to preclude ordinary procedure; and
3. That in any event, the claimant was not the senior unassigned available employe entitled to preference under Rule 27, as he had not yet been promoted to section foreman.

OPINION OF BOARD: Shortly after reporting for work on October 1, 1941, Section Foreman Breaker at Orleans, Nebraska, was notified of the serious illness of a daughter. He addressed a note to the Roadmaster at Oxford informing him that he was leaving and would be back the following day. He left one Thompson, section laborer, seniority date May 16, 1923 in charge. The foreman did not return until the morning of October 4, 1941.

The claimant, L. A. Kline, was assigned as section laborer at Holbrook, thirty miles from Orleans. His seniority as a section laborer dated from May 5, 1925. He also held seniority as assistant track foreman as of September 1, 1937. Kline contends that he should have been called in place of Thompson and asks for monetary loss.

It seems clear to us that Kline as an employe promoted from a lower to a higher rank would rank above Thompson, an employe declining promotion within the meaning of Rule 22. Under Rule 27, Kline was the senior unassigned available employe and should have been called for the work.

We are of the opinion, however, that the departure of Foreman Breaker was so sudden and unexpected and, because he left after reporting for work, at such a time that a reasonable opportunity was not afforded the Carrier to call Kline, that a violation of the agreement could not be properly claimed for October 1, 1941, the first day the regular section foreman was away. The case is similar in principle to that shown in Award 2391, to which we adhere. But we think the claim should be sustained for two of the claimed days,—October 2 and 3, 1941.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the current agreement to the extent shown by the opinion.

AWARD

Claim sustained as to October 2 and 3, 1941, and denied as to October 1, 1941.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.