

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20120
Docket **Number** MW-20107

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The Carrier violated the Agreement **when** it used Foreman M. T. McClure instead of Foreman **C. F. Pinkley** to relieve System Steel Gang Foreman **L. R. Clark** on August 7 and 8, 1971 (System File F-9836/D-6663).

(2) As a consequence of the aforesaid violation, Foreman C. F. **Pinkley** **now** be allowed sixteen (16) hours of pay at the System Steel Gang Foreman's time and one-half rate (\$6.5512 per hour) plus pay at the **same** rate for **all** time Foreman McClure was used in excess of eight (8) hours on each of **the** dates in question.

OPINION OF BOARD: There is no dispute as to the facts involved. **On** Saturday and Sunday, August 7 and 8, 1971, a System Steel Gang Foreman was absent from his regularly assigned position because of a death in his family. Claimant **C. F. Pinkley** and **M. T. McClure** are regularly assigned as district gang foremen. Claimant Pinkley had greater seniority than M. T. McClure in the foreman classification. M. T. McClure, the junior **employee**, **was** assigned the **two** day vacancy arising from the System Steel Gang Foreman's absence. Claimant Pinkley claims Article 2, Rule 3 was violated and asks payment of sixteen **(16)** hours at the System Steel Gang Foreman's **time** and one-half rate plus pay at the same rate for all time the junior **employee** was used in excess of eight (8) hours on each of the dates in question.

Rule 3 of Article 2 reads:

"Rights accruing to employees under their seniority entitle **them** to consideration for positions in accordance with their relative length of service with the Railway, as hereinafter provided."

We have consistently held that this rule applies to all positions, whether it be a regular bulletined position, a temporary position **or** one that is required to be performed only with overtime work. Seniority provisions are included in agreements for the benefit of the senior employees. They seek to protect and give preference in jobs, promotions and other **opportunities** to employees with greater seniority. By analogy, this view is supported by Awards 2490, 2716, 2994, 4531, 6136, 15640 and 19758.

We are not impressed with Carrier's statement that had Claimant requested the opportunity to fill the vacancy, the **request** would have been honored. Claimant **knew** nothing of said vacancy when the junior **employee** was selected to fill it; it is obvious that he could not request assignment thereto. Further, the record indicates that Carrier was aware of its responsibility to notify employees of **temporary** vacancies. Therefore, we must conclude that Carrier had an obligation to call Claimant before using a junior **employee** to perform the disputed overtime work and sustain the claim in its entirety.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauloz*
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.