NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22447
THIRD DIVISION Docket Number MW-22368

William M. Edgett, Referee

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
(Burlington Northern Inc.

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

(1) The Agreement was violated when Track Inspector J. E. Harper instead of Assistant Foreman David Stuefen was used to provide vacation relief for General Section Foreman V. G. Holloway from August 27, 1976 to and including September 6, 1976 (System File S-P-140C/MW-6(d)-1 1/5/77).

(2) As a consequence of the aforesaid violation, Claimant Stuefen shall be allowed.

(a) the difference between the General Section Foreman's rate and the Assistant Foreman's rate for eight (8) hours on each of the work days within the period extending from August 27, 1976 to and including September 6, 1976

and

(b) 36 hours of pay at the General Section Foreman's overtime rate."

OPINION OF BOARD: Carrier filled a vacation vacancy on the position of general section foreman at Tacoma, Washington under the provisions of Rule 19(B)(3). The employee argue that the position should have been filled by claimant, and that he was entitled to it under Rule 19(B)(2), in preference to the person used by Carrier.

The applicable provisions of Rule 19B (2) and (3) read:

B. Vacation relief may be provided by assigning qualified employes in seniority order in the following order of preference before other employes will be assigned to perform vacation relief on an involuntar basis:

(2) Employes holding seniority in lower classification and seniority ranks in the seniority sub-department of the vacationing employe who are working at the location or on the gang where relief is to be provided.

"(3) Employes who have filed written requests under Section A of this rule who are not working at the location or on the gang where relief is to be provided, and who will be subject to Rules 35 and 36."

The employes point out that claimant was Assistant Foreman on the gang in which the vacation vacancy existed. They assert that he was qualified because he held that position and also had attended Carrier's foreman school. On the basis of the uncontested facts the employes argue that they had shown an entitlement under the Rule and that Carrier was required to come forward with specific evidence to rebut that entitlement.

On the property Carrier denied the claim on the grounds that claimant was not qualified and offered to discuss the specific reasons for taking that position. There is no evidence in the record that the parties discussed the reasons which Carrier had for asserting that claimant was not qualified. The employes' position that Carrier had to come forward with the reasons why it believed claimant was unqualified may have merit under different facts. Here both parties share the responsibility for the lack of a specific record on that point. The employes could have insisted that Carrier state the reasons it adverted to and if it did not this point here would have more force. Carrier should have advanced these reasons fully but it at least made a start when it invited discussion on that point.

Under all of the circumstances, Carrier was entitled to rely on its statement of lack of qualifications. The burden of an incomplete record is shared by both parties in this case.

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 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 jurisdication over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1979.