

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **23159**
Docket Number **MW-23109**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed to recall furloughed employe Oliver T. Thompson to fill a temporary vacancy as section laborer at McIntosh, South Dakota on January 11, 12 and 13, 1978 (**System File C# 27/D-2161**).

(2) Because of the aforesaid violation, Oliver T. Thompson shall be allowed twenty-four (24) hours of pay at the section laborer's straight-time rate."

OPINION OF BOARD: The Claimant had been furloughed prior to January 11, 1978. But, instead of recalling the Claimant to serve as Section Laborer at McIntosh, South **Dakota**, on January 11, 12 and 13, 1978, Carrier used a junior employe. The Claimant was assertedly available and had the required ability, which prompted an allegation that Rule 11 was violated.

Carrier **contends** that on the three mentioned days, a train was stuck in snow "thus creating an **emergency** situation" and, accordingly, the Carrier used the readily available junior employe.

The record shows varying contentions concerning residences of the **employees**, as well as availability to handle the "emergency".

Here, we have noted that emergency service **may** be performed without regard to seniority. There is **some** question that the Claimant was readily available on the 11th **and**, thus, Carrier's action on that date was appropriate. But, we find no basis for a conclusion that Carrier should not have attempted to obtain the Claimant's services thereafter. There was nothing about the particular situation which relieved it of that type of an effort.

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 for **January 12 and 13, 1978.**

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST: _____

A.W. Paulos
Executive Secretary

Dated at Chicago, **Illinois**, this **30th** day of January **1981.**

