

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24065
Docket Number ~~MW~~-23953

Irvin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ ~~Missouri~~ Pacific Railroad company
{ (Former ~~C&EI~~)

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

(1) The ~~Carrier~~ violated the Agreement when it assigned Mr. D. L. Percy to perform the duties of the assistant foreman, pending assignment under bulletin at Mt. Vernon, Illinois from May 31, 1979 through August 17, 1979 instead of assigning Mr. B. L. Watts to perform such duties (Carrier's File S 214-114).

(2) The Carrier further ~~violated~~ the Agreement when it failed to promptly bulletin the vacancy in said assistant foreman's position which existed from May 31, 1979 through August 17, 1979.

(3) As a consequence of the aforesaid ~~violation~~, Mr. B. L. Watts be allowed the difference in what he received as a laborer and what he should have received at the assistant foreman's rate of pay for ~~each~~ day within the ~~period~~ mentioned within ~~Parts~~ (1) and (2) hereof."

OPINION OF BOARD: The critical event causing this dispute was the retirement of Assistant Track Foreman L. B. Drew. By letter dated May 11, 1979, Mr. Drew notified the ~~Roadmaster~~ that he was retiring effective May 31, 1979. The Organization received a copy of the letter on May 12th and the ~~Roadmaster~~ forwarded the letter to the District Engineer's office (where all Bulletins are issued) where it was received on May 29th. Subsequently, two actions were ~~taken~~ by Carrier: first, Assistant Foreman Perry was assigned to the temporary vacancy (pending Bulletining) on June 1, 1979; secondly, on July 17, 1979 the Bulletin for the permanent ~~vacancy~~ was issued. Claimant was assigned to the position (after passing an examination on operating rules) by Bulletin dated August 17th.

The applicable rules provide as follows:

"Rule 25 - New Positions and Vacancies-Bulletins

(a) New positions or vacancies other than that of laborer including ~~temporary~~ vacancies of more than thirty (30) days shall be bulletined.

(d) Temporary vacancies of less than thirty (30) days will not ~~be~~ bulletined, A temporary vacancy ~~for foreman~~ or assistant ~~foreman~~ for ten (10) days or less ~~may~~ be filled ~~by~~ using the senior capable employs on the gang. If it can be determined that such temporary vacancy will continue for more than ten (10) days and less than thirty (30) days, the senior ~~employe~~ on that seniority district, if competent, will be given preference in filling the temporary vacancy."

Petitioner argues that **Carrier** violated the Agreement, and specifically Rule 25(d) when it failed to assign **Claimant** to the temporary vacancy created, since he was the senior capable **employee** on the gang in question. There was **no** question about Claimant's ability to fill the position since he had done so **in 1977 and 1978**, according to the Organization. Furthermore, the Organization insists that the bulletining of the vacancy in July, some fifty two days **following** the notification, cannot be considered to be "prompt" as specified in the Rules.

Carrier maintains that the temporary **assignment** of Mr. Perry to the vacancy was appropriate since he already had seniority as **an** Assistant Foreman, which **Claimant** did not have, and his appointment was mandated by the clear language of **Rule 25(d)**. Carrier points out that the Rule provides that temporary vacancies of Assistant Foreman, which are for more than 10 days but less than 30, will be filled by the senior employee in the seniority district who desires to fill the job. With respect to the bulletining of the position, **Carrier** states that the action was taken as soon as possible under extenuating circumstances. **The** clerk responsible for the bulletining was on vacation at the time the vacancy was known to the District Engineer's office and while on vacation she broke her **arm**. Upon her return to work the bulletin **was promptly posted** on **July 17, 1979**.

With **respect** to the temporary vacancy, the **Board** finds that **Carrier's** position is correct. It is apparent **that** Mr. Perry, who had seniority as an Assistant Foreman whereas Claimant did not, had the prerogative to fill the temporary **vacancy**. Claimant's position with regard to the temporary vacancy does not have **Rule support and must be rejected**.

The record indicates that Carrier did issue Bulletins on **May 24, 1979** and **June 21, 1979** but did not issue the Bulletin covering the vacancy involved herein until July 17th. There does not **appear** to be any reasonable explanation of why the instant vacancy was not Bulletined in June, in spite of the Clerk's misfortune. By any normal standard Carrier's actions in the bulletining process cannot be deemed to be "prompt". It is apparent that as a result of **Carrier's** failure to post the position at least in mid-June, Claimant lost one month's assignment (approximately) as an Assistant Foreman. It is concluded therefore, that as reparation, Claimant should be allowed the difference **in pay for a thirty-day period**.

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 X A R D

Claim denied in part and sustained in part as indicated above;
Claimant shall be **made** whole by being paid the difference in what he received as a laborer **and** what he should have received as an assistant **foreman** for a thirty (30) day period.

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

ATTEST: Acting **Executive** Secretary
National **Railroad** Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago, Illinois**, this 14th day of December 1982.