

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24088  
Docket Number MW-23414

Joseph A. Sickles, Referee

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

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

(1) **The** Carrier violated the Agreement when **it** permitted B. McDonough to displace M. **R. McGrath** on December **4, 1978** (System File **C#11/D-2284**).

(2) **Mr. M. R. McGrath** be allowed the difference between what he was paid as a laborer and what he should have been paid as a foreman because of the aforesaid violation **beginning** December **4, 1978** continuing until he is allowed to return to his former position."

OPINION OF BOARD: When Section Foreman McDonough was assigned to a temporary extra gang Foreman's position, the Claimant was assigned to the Foreman's position which was vacated by McDonough.

When the regular **incumbent** of the extra gang position returned to his regular position, Foreman McDonough was **re uired** (according to **Claimant**) to return to his prior position **within a ten410** day time limit. Although Rule 13 states that an employee assigned to a temporary service shall return to his former position within ten (10) days, McDonough was permitted by the Carrier to return on the fourteenth day. When McDonough returned to his former position the **Claimant** had to exercise his seniority to a lower rated position.

The Organization points out that Rule 13 is mandatory and it states that an individual shall return to his former position within ten (10) days and if he doesn't he **suffers** certain seniority restrictions.

The Carrier denied the claim because **McDonough** had merely been allowed to work the Foreman's position at lake City; but he was not required to return to it within a ten (10) day period because he did not "own" that position by bulletin. Thus, the Carrier argues that Rule 8(c) is the **pertinent** rule and Rule 13 allows a returning employee to exercise seniority under that rule.

The Board is not persuaded that McDonough was not required to return to the position within the specified time period and under all of the circumstances of record we will sustain the claim.

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 jurisdiction over the dispute involved herein; and

That the Agreement was **violated.**

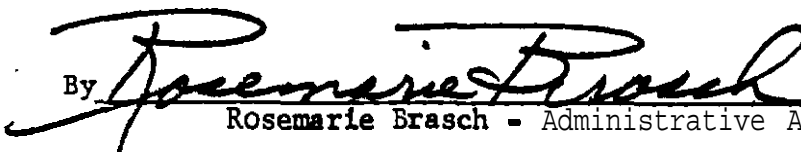
A W A R D

Claim sustained.

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

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1938.

