

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24616
Docket Number MW-24163

Irwin M. **Lieberman**, 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 and refused to compensate Section Laborer J. R. Kuska for wage loss suffered on December 31, 1979 and January 2, 1980 during which time he was improperly displaced from his regular assignment as section laborer on the **New Lisbon** section (System File C#06/D-2411).

(2) Because of the aforesaid violation, Section Laborer J. R. Kuska shall be allowed sixteen (16) hours of pay at his straight-time rate.

OPINION OF BOARD: The Claim herein involved two days pay for work allegedly performed by a junior **employee** rather than by Claimant. There is substantial disagreement between the parties not only as to the merits of the Claim but also with respect to the arguments **presented** to this Board (as well as allegedly new evidence).

A review of the history of this dispute discloses a number of serious voids and discrepancies. For example, Petitioner asserts that Claimant was entitled to the position, having bid on it and having more seniority than **M. Lorenz**. The record reveals that Carrier denies ever receiving a bid from Claimant and there is no substantiation of that bid. In fact, there is no information whatsoever in this record as to the bidding process and further no information as to how and when Claimant got on the job. In addition to these problems there is significant difference between the parties as to precisely what is being disputed. **In view** of the circumstances enumerated, the Board has no choice but to deny the claim: Petitioner has not met its burden of proof in this matter.

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 **Employee** 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

