

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25400  
Docket Number MW-25441

Eugene T. Herbert. Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Southern Pacific Transportation Company (Western Lines)

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

(1) The Carrier violated **the** Agreement when it failed and refused to permit Foreman D. S. Garcia to displace a junior foreman on Extra Gang No. 8 on and subsequent to August 9, 1982 (Carrier's File **MofW 148-501**).

(2) Claimant D. S. Garcia shall be allowed pay (straight time and overtime) equal to that paid to Foreman R. **Gasco** during the claim period.

OPINION OF BOARD: Claimant sought, unsuccessfully, to exercise his seniority by displacing a Student Foreman who had been assigned a week earlier as a vacation relief foreman.

Although Claimant's assertion of seniority is undisputed, he was not available on the date of the assignment in question.

While the Agreement between the Parties provides for displacement by senior **employees**, Carrier cites Article 12(b) of the National Vacation Agreement of **December** 17, 1941, as amended, which reads as follows:

"(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if **they** had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority." (Emphasis added)

The Board finds that provision controlling in this case. we cannot hold that the Carrier made no effort to **observe** the principle of seniority in view of Claimant's unavailability on the date of the assignment.

Accordingly, Organization has failed in this case to establish a violation by Carrier of any Rule of the Agreement.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.