

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26251
Docket Number MW-25978

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Duluth, Winnipeg & Pacific Railway Company

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

(1) The Agreement was violated when, on April 27, 28 and 29, 1983, the Carrier **assigned** and used junior Group II Machine Operator J. Caple to **fill** a temporary Group II **Machine** Operator's position instead of recalling and using furloughed Group II Machine Operator J. Lind.

(2) As a **consequence** of the aforesaid violation, furloughed Group II Machine Operator J. Lind shall be allowed twenty-four (24) hours of pay at the Group II Machine Operator's straight time rate."

OPINION OF BOARD: The dispute in this matter deals with the application of Rule 10(a), which provides:

"Rule 10-Temporary Vacancies

(a) Temporary vacancies of less than thirty (30) calendar days need not be bulletined, but may be filled by the senior qualified employee immediately available. An employee who does not exercise his seniority to such a temporary vacancy of thirty (30) calendar days **or** less will not forfeit any seniority."

The thrust of the Claim is that Carrier used a junior Group II Machine Operator on a Machine Operator Position on April 27, 28 and 29 of 1983, instead of Claimant herein who was more senior and was furloughed at the time, and available. Carrier denies that the junior employee operated a Group II Machine on any of the days in question. Further Carrier avers that on one day when the junior employee was used at a derailment site (April 27th) If he did operate a machine, it was on an emergency basis. Carrier also notes that on one of the Claim dates, April 28th. the junior employee did not work at all. Carrier presented the time records of the junior employee to substantiate its position.

Organization is correct in that the question of emergency work was not raised during the handling of this matter on the property and hence is improperly raised subsequently. However, Organization has failed to support its Claim with any evidence to support its factual position which **is** the fundamental aspect of the dispute. Mere assertions do not take the place of facts and evidence. In this dispute Organization has not borne its burden of proof and the Claim must be denied.

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, 1914;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved **herein**; and

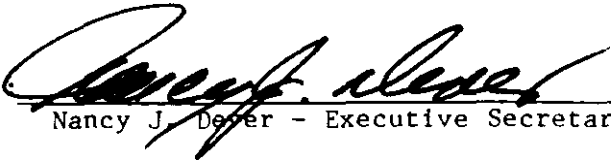
That the Agreement was not violated.

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 20th day of **March 1987**.