

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26349
Docket Number MW-26066

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The Carrier violated the Agreement when it assigned either junior cut-back Welder S. Frazier or junior cut-back Welder Helper R. Long to fill a temporary vacancy as welder on the Northern Region Rail Gang on April 18, 19, 20 and 21, 1983 instead of using cut-back Welder J. Sinks who was senior, available and willing to fill that vacancy (System File C-TC-1656/-MG-4103).

(2) Because of the aforesaid violation, cut-back Welder J. Sinks shall be allowed the difference between what he should have received at the welder's rate and what he was paid at the welder helper's rate on the claim dates referred to in Part (1) hereof."

OPINION OF BOARD: The relevant facts of this Claim are not in dispute. On April 18-21, 1983, Carrier found it necessary to augment Northern Region Rail Gang Welders working in the vicinity of New Buffalo, Michigan. As a result, **Trackman** S. Frazier was upgraded to fill the Welder position on the first three days, while **Trackman** R. Long was upgraded to the same position on April 21, 1983.

On May 21, 1983, the Organization filed this Claim, contending that Carrier should have solicited Claimant for the temporary Welder position. Carrier rejected the Claim. Thereafter, it was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that Carrier's action violates Rule 2 - Seniority Rights of the Agreement. It points out that Claimant holds seniority in the Welder class over **Trackmen** Frazier and Long. In its view, Welder work simply cannot be given to anyone who does not hold seniority in that class. As the Organization sees it, this Rule applies equally to temporary positions, as well as permanent ones. Therefore, the Organization asks that the Claim be sustained in its entirety.

Carrier, on the other hand, submits that it was not obligated to award the temporary Welder position to Claimant. It insists that its long-standing practice has been to fill **temporary** work with the senior employe who requests such assignment. In this case, Carrier argues, Claimant failed to apprise his Supervisor that he wanted to be upgraded to fill a temporary Welder position. Furthermore, Carrier asserts, Claimant simply sat by and did nothing while others performed work that allegedly belonged to him. Thus, Carrier reasons that Claimant is not entitled to a sustaining award under the facts of this case.

A review of the record evidence convinces this Board that the Agreement was violated. Rule 2 clearly establishes that seniority is the primary basis upon which vacant positions must be awarded. It is undisputed that seniority accrues within a particular class. **Moreover**, nothing in Rule 2 or in any other provision of the Agreement, exempts temporary work from this requirement. Claimant had "ore seniority than **Trackmen** Long and Frazier. Therefore, it is clear that Carrier violated the Agreement when it failed to offer Claimant the work in question.

However, Claimant is not entitled to the full relief requested by the Organization. Obviously, by the end of the first day, he knew that others were **performing** work to which he was entitled. As such, he had an obligation to apprise supervision of his desire and right to such work. **It** is axiomatic in Labor relations that one must mitigate damages whenever possible. In this case, that means Claimant should have made known his desire to fill the temporary Welder assignment. He did not. Thus, while the Agreement was violated, Claimant is entitled to the difference between Welder Helper pay and Welder pay only for April 18, 1983, the first day of the assignment. Thus, the Claim is sustained to this extent.

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.

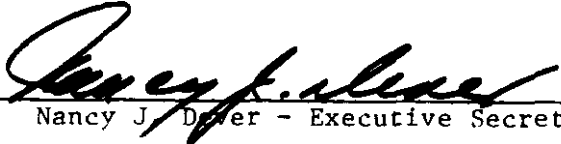
Award Number 26349
Docket Number MW-26066

Page 3

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.