

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it failed to assign Mr. W. Murphy to fill a temporary vacancy as track inspector on July 15, 18, 19, 20, 21 and 22, 1985 (Claim 37-85).

(2) Because of the aforesaid violation, Mr. W. Murphy shall be allowed forty-eight (48) hours of pay at the track inspector's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On six days in July, 1985, Carrier assigned Class B Machine Operator Brodin, whose headquarters point was Keenan, to a temporary vacancy of Track Inspector at Keenan. Claimant, who was last assigned to work at Rainy Junction, but was now furloughed, with less seniority than Brodin as a machine operator but with more seniority than Brodin as a Track Inspector, filed a claim contending that he should have been called for the vacancy.

The method for filling such vacancies is prescribed in Rule 4(c) of the Agreement, reading:

"(c) Positions or vacancies of thirty (30) calendar days or less will be filled in the following order:

- 1) Bulletined relief position if established.
- 2) Senior qualified employee from the headquarter point where the temporary position or vacancy occurs.
- 3) Senior qualified employee holding seniority in the classification."

It is our view that the Rule was administered correctly when Carrier used Brodin, rather than Claimant to fill the vacancy. Inasmuch as a bulletined relief position had not been established the Rule required that an attempt be made to fill the assignment under item 2. Brodin was a qualified employee from the headquarter point where the vacancy occurred. As such he had preference to the vacancy over Claimant, who while qualified, was not from the headquarter point where the vacancy occurred. Claimant's entitlement was under item 3 - as the Senior qualified employee holding seniority in the classification. However, the vacancy was filled before it was necessary to move to step 3.

The language of the Rule sets out the order in which the vacancy is to be filled and it was followed in this case. The Claim is without merit.

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 10th day of August 1989.