

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

(Brotherhood of Maintenance of Way Employees  
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 and refused to bulletin the ditching crew foreman's position created June 17, 1985 (Claim Nos. 42-85 and 43-85).

(2) The Carrier violated the Agreement when it used either Assistant Foremen T. Ward, J. Bijold, C. Brodin or K. Penttinen to fill the foreman's position on the ditching crew from June 17, 1985 through August 14, 1985, instead of using Foreman S. Weden (Claim No. 43-85).

(3) The Agreement was violated when the Carrier refused to allow Assistant Foreman J. Bijold pay at the foreman's rate of pay for the work he performed July 1, 1985 through August 5, 1985 (Claim No. 43-85).

(4) The claims referred to within Parts (1), (2) and (3) hereof shall be allowed as presented because the Carrier failed to disallow said claims as contractually stipulated within Rule No. 12-1(a).

(5) The position referred to within Parts (1), (2) and (3) hereof shall be bulletined as a consequence of the violations referred to within either or any combination of Parts (1), (2), (3) and/or (4) above.

(6) Claimant S. Wedel shall be allowed the difference between the rate of pay he received and the foreman's rate of pay for the work performed by Assistant Foremen T. Ward, J. Bijold, C. Brodin and K. Penttinen referred to within Part (2) hereof as a consequence of the violations referred to within either or all of Parts (1), (2) and/or (4) hereof.

(7) Claimant J. Bijold shall be allowed the difference between the assistant foreman's rate of pay and the foreman's rate of pay for all of the work he performed as referred to within Part (3) hereof as a consequence of either or both of Parts (3) and/or (4) hereof."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

In July and August, 1985, Carrier worked a temporary Assistant Foreman's assignment in connection with a ditching crew headquartered at Steelton, Minnesota. The Organization contends that this assignment should have been bulletined as a Floating Gang Foreman. Had the job been bulletined as such, an employee different from the one used would have worked the job. The Claim before us seeks additional compensation between the Assistant Foreman's rate and the Foreman's rate for the individual who worked the job and Foreman's pay for the individual who the Organization claims would have worked the assignment if it had been properly bulletined.

On examination of this record we find that the Organization's entire case rests upon a conclusionary allegation that Foreman's work was completed by the temporary Assistant Foreman during the period of the Claim. This allegation has not been elaborated upon, at any time, while the matter was under consideration on the property, or before our Board, nor, was it ever backed up with even elementary proof. Under the circumstances, the Claim must be denied because of lack of proof.

The second facet of the Claim must also fail because of lack of proof. The presumption of this Claim is that the temporary Assistant Foreman was actually doing Foreman's work, thus, a job of Foreman should have been bulletined. To get to this, Claim proof must be present that the Assistant Foreman actually did Foreman's work. This, as noted above, has not been done.

On the matter of the Organization's time limit allegations, search of the record fails to support a conclusion that the Claims were not timely denied. Accordingly, that facet of the Claim is denied as well.

A W A R D

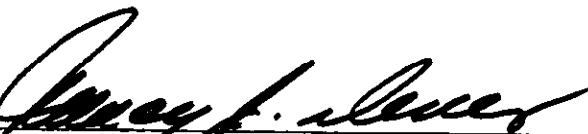
Claims denied.

Form 1  
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Award No. 28340  
Docket No. MW-27502  
90-3-86-3-759

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.