Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28745
Docket No. MW-28253
91-3-88-3-29

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it revoked the 'free agent' status of Sectionman R. M. Pettit and refused to allow Mr. Pettit to displace junior employee J. Quilling at Shoreham on June 2, 1986 (System File R286 #1662P/800-46-B-265).

(2) The claim* as presented by General Chairman G. Western on July 25, 1986 to Regional Engineer T. M. Parsons shall be allowed as presented because said claim was not disallowed by Regional Engineer Parsons in accordance with Rule 13-1 (a).

(3) As a consequence of Parts (1) and/or (2) above, Sectionman R. M. Pettit shall:

> '... be made whole for all time lost to him as a result of being deprived of the privileges of a free agent as set forth in Schedule Rule 8(1) due to the Carrier's own failure to provide the necessary employment information; and, he shall have all vacation, fringe benefits, displacement privileges and other rights restored.'
>
> *The letter of claim will be reproduced within our initial submission."

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.

Claimant was furloughed to free agent status in early 1986. Thereafter, he made twice-weekly inquiries to the Roadmasters of the Sections within his Seniority Sub-district to determine if he could displace any junior employees. The Glenwood Section Roadmaster took a leave of absence from May 5 - 24, 1986, and the Carrier did not replace the Roadmaster during the leave. As a result, Claimant was unable to obtain displacement information from his usual source. A junior Sectionman worked more than 10 days on the Glenwood Section during the Roadmaster's leave. On May 29, Claimant learned of a different junior employee working on the Shoreman Section. He sought to displace this employee effective June 2, but was refused. He was informed he had forfeited his free agent status, pursuant to Rule 8, as a result of the junior employee working, albeit without his knowledge, on the Glenwood Section for more than 10 days. The Organization and Claimant made claim in writing for the lost work by letter dated July 25, 1986, to Carrier's Regional Engineer. The Regional Engineer did not respond. The Organization then wrote on November 5, 1986, to the next higher level of Carrier authority to request a default allowance of the Claim under Rule 13-1(a) of the effective Agreement. This Rule provides in pertinent part as follows:

> "***
> Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims***."

The Carrier issued its first written denial of the Claim by letter dated January 2, 1987. This letter raised several procedural defenses to the default provisions of Rule 13-1(a). Among these defenses is the contention that the Claim was invalid ab initio due to lack of specificity and, therefore, the Carrier's duty to respond under Rule 13-1(a) was never triggered.

We have considered the procedural defenses raised by the Carrier and find them to be without merit. Accordingly, the Claimant and Organization are entitled to a non-precedent setting allowance of the Claim under Rule 13-1(a). The remaining issue is to determine the remedy.

Claimant shall be made whole for all losses suffered as a result of being prevented from displacing the junior employee at Shoreman, limited to the time he could have held the specific vacancy in question. This determination will be made jointly by the Parties.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.