

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 Employees
(
(Soo Line Railroad Company (formerly Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned junior Laborer M. G. Farley instead of Laborer B. M. Olson to fill the fuel truck operator position on Material/Crossing Gang A from July 21 through September 30, 1986 (System Files C #13-86, C #14-86, C #17-86 and C #19-86).

(2) As a consequence of the aforesaid violation, Mr. B. M. Olson shall be allowed one hundred seventy-eight (178) hours of pay at the fuel truck operator's time and one-half overtime 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 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.

This Claim arose when Carrier assigned a junior employee to the temporary position of Fuel Truck Operator.

On July 9, 1986, Carrier asked the members of two Material/Crossing Gangs, working between Rosemount and Comus, Minnesota, if any were interested in the truck position. Claimant was the senior employee that expressed interest. Rule 8(c) of the effective Agreement reads,

"New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, except that senior, available, qualified employees, on proper request to the Division Engineer, will be given preference..."

Claimant was scheduled to be on vacation the following week, July 14-18, 1986. Other provisions of the Agreement prevented the Carrier from deferring the scheduled vacation. The record is conflicting whether Claimant was offered the position on the condition that he voluntarily defer his vacation. Claimant says the vacation topic never was mentioned. Carrier contends that Claimant withdrew his interest in the position when he was told he would have to reschedule his vacation to be considered available for the job. Claimant did take his vacation as scheduled. Upon his return from vacation, Claimant learned a junior employee had been assigned and was established in the position. On this and several subsequent occasions, Claimant renewed his request to be assigned the job. The job lasted until September 30, 1986, some seventy-five calendar days. The junior employee also possessed an Iowa Chauffeur's License which, according to the record, was the substantial equivalent of a Minnesota Class B truck operator's license. Claimant had no similar license.

The Claim, in essence, alleges two violations. First, Carrier failed to properly assign the initial temporary position. Second, when the position continued beyond thirty days, it should have been bulletined and awarded to Claimant.

After careful review of the record, the Board finds, essentially, in favor of the Carrier on both alleged violations. Rule 8(c) clearly provides for an informal assignment process for temporary vacancies subject to due consideration of seniority, availability and qualification. Based on the evidence, the Board finds that Claimant did not wish to forego his scheduled vacation. Carrier was therefore, justified in considering him unavailable for the temporary position. The licenser issue was also a relevant consideration.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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