

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Duluth, Winnipeg & Pacific Railway Company

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

(1) The Agreement was violated when the Carrier assigned Mr. J. Jacobsen instead of Mr. A. Hansen to the temporary Group I machine operator position at Virginia Yard on September 15, 17 and 18, 1986 (System File G-106-H-86(S)/Claim #205).

(2) Mr. A. Hansen shall be allowed the difference between what he should have received at the Group I machine operator's rate and what he was paid at the trackman's rate on September 15, 17 and 18, 1986. In addition, Mr. Hansen shall be compensated for all overtime wage loss suffered as a consequence of the violation referred to in Part (1) 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 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 September 15, 17 and 18, 1986, Claimant and a more senior employee were occupying Sectionman jobs at Virginia Yard. The Carrier assigned the senior Trackman, who also held more Group I Machine Operator seniority than Claimant, to fill a temporary vacancy on the front end loader operator job, a Group I Machine Operator position. The Organization alleged that the Carrier violated Rule 19(c) because the senior employee was allegedly filling a temporary flagman's job at Central Lakes and was therefore, ineligible to be placed on another temporary assignment.

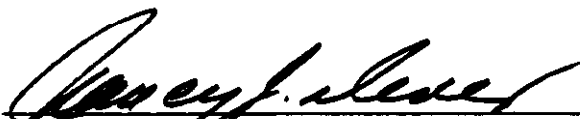
In this case, the Organization failed to come forward with evidence proving the factual basis for its Claim. The record does not contain any evidence that the senior employee occupied an ongoing temporary flagman's vacancy. Absent proof of this critical fact, this Board cannot even reach the issue of whether under Rule 10(c), the Carrier would still be able to temporarily assign the senior employee to the Group I Machine Operator position Third Division Award 26251. In conclusion, this Board is left with the Carrier's representation that the senior employee occupied a regular Virginia Yard Sectionman position, just as Claimant did, and thus, the Carrier complied with Rule 10(c) which provides that the Carrier may fill temporary vacancies with the "...senior qualified employee immediately available."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Payer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.