

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: (
(Soo Line Railroad Company

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

(1) The Agreement was violated when the Carrier assigned junior employe B. Ness instead of senior employe R. Hofmann to perform vacation relief work on Crew 248 at Glenwood, Minnesota from August 1 through 5, 1988 (System File R603/800-46-B-326).

(2) Mr. R. Hofmann shall be allowed five (5) days of pay at the pro rata rate for section laborers and have all overtime, vacation, fringe benefits and other rights restored which were lost to him as a result of the aforesaid violation."

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 involves filling a vacancy on Crew 248, between August 1, and August 5, 1988, when the Foreman was on vacation. The facts in the record demonstrate that Carrier used an employee junior to Claimant when Claimant was available and qualified. Carrier's proffered reasons for not using Claimant, when he was senior to the employee used, are found unpersuasive. The Claim will be sustained.

A W A R D

Claim sustained.

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Award No. 29113
Docket No. MW-29140
92-3-89-3-573

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.