

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union 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 Drawbridge Operator B. H. Begay instead of senior Drawbridge Operator C. T. Agte to work on the Aberdeen Drawbridge from January 25 through 29, 1988 (Carrier's File 880159.)

(2) As a consequence of the aforesaid violation, Mr. C. T. Agte shall be allowed forty (40) hours of pay at the applicable straight time rate, five (5) hours of pay at the time and one-half overtime rate and he shall be made whole for any and all health and welfare benefit losses suffered as a result of the 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 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.

This dispute involves the filling of a temporary vacation vacancy. The vacancy occurred from January 25 through January 29, 1988, and Carrier was notified that the incumbent of the drawbridge assignment desired that vacation period on January 18. The Carrier filled the position with an employee who was junior to Claimant as a drawbridge operator.

The Organization maintains that Rule 20 (a) Note 4, dealing with the filling of temporary vacancies, is not applicable to the factual circumstances here, and the National Vacation Agreement is controlling. Specifically, it relies on the following language from that Agreement:

"(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

The Organization also argues that Claimant was qualified to fill the position and there was ample time for him to "break-in." That fact is supported by his being given a similar vacancy with a short break-in some four months following this incident.

Carrier argues first that Claimant was not qualified to fill the vacancy in question. This is supported by his admission that he needed at least break-in to operate this particular drawbridge. Further Carrier asserted that the junior employee utilized for the vacation vacancy was the only qualified operator on the Group 23 Roster. As an additional point, Carrier insists that there is no rule support for the Organization's position in this matter. Also, the Organization failed to argue the National Vacation Agreement on the property and may not raise that material for the first time before this Board.

An examination of the provisions contained in Note 4 of Rule 20 (a) indicates that none of the circumstances specified exist in this dispute. For that reason, with or without the provisions of the National Vacation Agreement (which was not raised on the property) it appears that the Organization's position is grounded simply on the principle of seniority. However, this Board must note that Claimant was admittedly not qualified and further that there is no specific contractual language mandating his selection. There is no language requiring Claimant's selection for the temporary vacancy merely based on seniority. There must be clear and applicable language for the Organization to prevail (see Third Division Awards 18686, 26252 among others). For the reasons indicated, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.