

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 Carrier violated the Agreement when Crew 602 was reduced below the minimum B&B crew consist beginning April 20, 1987 (System File R481/800-46-B-285).

(2) As a consequence of the violation referred to within Part (1) hereof:

'... Claimant Sollom shall now be reimbursed for the equivalent of eight (8) hours pay at the pro rata rate for each day of violation beginning on April 20, 1987, and continuing until such time as the Carrier restores Crew 602 to the proper minimum force; and, he shall have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above 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.

The basic facts are not disputed. On April 19, 1987, a Carpenter left B&B Crew 602 to fill a position in B&B Crew 614. This created a vacancy for a carpenter on the Crew 602 pending the bulletining and filling of the position. The exact timing concerning the filling of the vacancy is not known. The fact there was a vacancy caused the crew to temporarily fall below the minimum crew level as set forth in Appendix G. It states in pertinent part:

"Appendix G

Minimum B&B Crew Consist

MEMORANDUM OF AGREEMENT between the Soo Line Railroad Company and its employees represented by the Brotherhood of Maintenance of Way Employees.

With the consolidation of the former Duluth, South Shore and Atlantic Railroad Company and the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company into the merged Soo Line Railroad Company, and the subsequent integration of Bridge and Building Department employees' seniority on a system basis, it is agreed that the minimum B&B crew requirements in effect on the former Minneapolis, St. Paul and Sault St. Marie Railroad Company will apply throughout the Soo Line System. This minimum is as follows:

- 1 Foreman
- 1 Assistant Foreman
- 2 Carpenters
- 2 Helpers

The number of Carpenter Helpers employed in a gang will not exceed the minimum of Carpenters and Assistant Foremen employed in that gang. It is understood that this does not apply to floating crews.

This Agreement does not modify or in any manner affect schedule rules or agreements except as specifically provided herein and will become effective June 1, 1961 and continue in effect thereafter subject to change in accordance with the provisions of the Railway Labor Act as amended."

Predicated on the fact that the crew was below its minimum consist for some period of time, the Organization filed a claim on behalf of the Claimant, who at the time was in furlough status as a carpenter helper. The central theme to the Carrier's response is that the Claimant has no seniority as a carpenter and was not qualified as a carpenter. Therefore, they argue he did not stand to be called for the vacancy in question.

The Board must agree with the Carrier that a claim cannot be sustained since the Claimant was in no way damaged even if the Agreement was violated. To be a proper Claimant, the Carrier's action must have damaged the Claimant by either depriving him of work opportunities, other rights and privileges to which he was arguably entitled under the Agreement. The Claimant was not a carpenter and had no seniority as such. Moreover, there is no rebuttal to the Carrier's assertion that he was not qualified to move up to the Carpenter position under Rule 6(e). The Organization's only response was to argue that if the vacancy had been filled by promoting another carpenter helper, the Claimant would have been recalled from furlough. This is not only speculative but irrelevant to the issue presented by this case.

In summary, the claim must be dismissed since the Claimant, as evidenced by this particular record, had no contractual right to the vacancy in question and therefore he is not a proper Claimant.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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