

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31392
Docket No. MW-30674
96-3-92-3-402

The Third Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

PARTIES TO DISPUTE: (Soo Line Railroad Company (formerly Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)
(
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) Claim on behalf of Terrance Maslowski, for fifty six (56) hours pay at the straight time rate of pay which the Claimant lost due to a junior employee, Brian Merrell, allegedly being allowed from a furloughed status to fill a vacant section laborer's position of less than thirty (30) days duration instead of first honoring Mr. Maslowski's request to fill such position. Organization's File No. C-13-91-I160-01."

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 employee 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.

The parties to said dispute waived right of appearance at hearing thereon.

Effective April 12, 1991, Claimant's position as a Section Laborer at St. Paul, Minnesota, was abolished as a part of Carrier's force reduction.

Claimant holds a Section Laborer's seniority date of July 25, 1988.

Claimant alleges that, on April 12, 1991, he telephoned Soo Line Personnel Clerk G. Hugo at Carrier's Minneapolis Personnel

Office, and requested information about available positions; and he further alleges that he also indicated that he would be available to work any subsequent temporary vacancy(ies). Said telephone call was allegedly overheard by P. G. Vogt, a co-worker.

Claimant further contends that in that same telephone conversation, Mr. Hugo indicated that no positions were available at that time; but that Claimant should call back in a week.

According to Claimant, he called Carrier's Minneapolis Personnel Department on April 16, 18, 22, 24 and 26, 1991; and on each occasion, he was advised by the Clerk that no such work was available.

On May 1, 1991, Claimant was returned to work on Section Crew #39G, which was a permanent assignment.

While Claimant was on furlough status, however, on April 18, 1991, Carrier recalled junior Section Laborer, B. Merrell, whose Section Laborer's seniority date is June 19, 1990, to fill a temporary vacancy on Section Crew #39F at St. Paul, Minnesota. Mr. Merrell worked said position on April 18, 19, 22, 23, 24, 25 and 26, 1991, expending eight (8) man-hours per day on each date.

As a result of the above described incident, Organization filed a claim on behalf of Claimant on June 4, 1991, alleging a violation of Schedule Rule 8(c) which reads as follows:

"RULE 8

BULLETINS - NEW POSITIONS OR VACANCIES

- (c) 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, with the understanding they will not be paid for time lost nor for time consumed traveling to and from such position.

Emergency service may be performed without regard to seniority."

Organization's basic position in this dispute is that Claimant made a "proper request," as required by Schedule Rule 8(c), when he telephoned Personnel Clerk G. Hugo on April 12, 1991, and on five (5) other subsequent occasions as well; and that he informed Management that he (Claimant) was available and willing to perform service. Claimant's telephone call to Clerk Hugo on April 12, 1991, Organization contends, was verified by an "earwitness written statement," signed by P. G. Vogt, another maintenance of way employee.

Organization next asserts that Carrier's contention that requests for work in the exercise of seniority in such situations must be made in writing, is totally erroneous, since Rule 8(c) contains no such language; and Carrier has failed to show that any such practice existed on the property.

Continuing, Organization further argues that the precedential decisions of the Third Division of the National Railroad Adjustment Board places upon Carrier an affirmative responsibility to assist bidding employees, such as Claimant in the instant case, to identify appropriate positions which their seniority would allow them to fill. No such assistance, Organization contends, was provided to Claimant in the instant case.

Organization's final major element of argumentation herein is that approximately two (2) years prior to the inception of the instant dispute, Carrier proposed changes in Schedule Rules 8 and 11 which, in significant part, would have required employees seeking to fill temporary vacancies to file written requests in each sub department with different personnel offices for various classes. While these proposals were never adopted by the parties, however, according to Organization, in the instant case, Carrier is now attempting to assert that the current rules require burdensome procedures of precisely the same nature as those which were previously proposed by Carrier, rejected by Organization, and dropped by Carrier in its negotiations with Organization. If such a past practice exists, as Carrier presently contends in the instant case, why then, Organization queries, would Carrier have made such similar negotiations proposals two (2) years previously?

Carrier, in rebuttal to Organization's contentions, argues that Rule 8(c) requires that a specific, written request be made by an employee when attempting to fill a temporary vacancy in accordance with seniority. "Blanket requests" to fill "any and all" vacancies, Carrier contends, such as that which was utilized by Claimant herein, are inappropriate for such purposes. Absent such a specific, written request, Carrier maintains, then the "proper request" requirement, as contained in Rule 8 (c), has not

been satisfied.

Moreover, notwithstanding Carrier's preceding procedural requirement argument, and even assuming that such specific, written requests are not required, which Carrier disputes, Carrier further contends that, in the instant case, Claimant did not even make an oral request to fill a vacancy(ies) on a temporary basis in accordance with his seniority. In this regard, Carrier argues that there is no proof whatsoever in the record to corroborate or substantiate Claimant's contention that he telephoned Personnel Clerk Hugo on April 12, 1991, or on any other subsequent day as Claimant contends. Accordingly, Carrier views with suspicion Organization's Submission of signed statements from Claimant and co-worker P. Vogt, which allege that Claimant made an oral request to fill a vacancy in a telephone conversation with Clerk Hugo on April 12, 1991. Carrier also asserts that said signed statements are "obviously self-serving"; they do not contain any verifiable facts to support them; and they are an attempt on Claimant's part to be paid for work which he did not perform.

The Board has carefully read, studied and considered the complete record which has been presented in this case, and we conclude that Claimant did not make a proper request for reassignment as is required by Rule 8(c) to fill temporary vacancies in accordance with his seniority. We make this determination based upon a narrow reading of the facts which have been presented by the parties herein. A basic rule in any dispute resolution procedure is for the adjudicative body to base its decision upon the narrowest set of facts presented. We are so inclined.

In the instant case, therefore, we are determining merely that Claimant failed to make a written request to fill available temporary vacancies in accordance with his seniority. This improper action on Claimant's part placed him outside of the requirements of Rule 8(c) because an oral request, in these circumstances, is not a proper request as contemplated by the applicable Rule.

The railroad industry, like many businesses, conducts its labor relations functions based upon written correspondence. In fact, it is the rule more than the exception, that any communication between the parties, or between an employee and management, is done in writing so as to clearly establish a record of the information exchanged. Furthermore, given that Carrier's failure to abide by the temporary assignments' priorities outlined in Rule 8(c) contains monetary remedies, then it is only reasonable that a "proper notice," as contemplated by Rule 8(c), means a "written notice."

Given that Claimant failed to provide his notice of availability in accordance with Rule 8(c), then we must decline this claim. In addition, however, we will also decline the opportunity, as presented by the parties herein, to resolve the issue of whether or not Rule 8(c) also requires a maintenance of way employee to self-identify specific position(s) constituting temporary vacancies, and to make a specific, written request to Carrier to exercise his seniority in order to fill said specifically identified position(s). These particular issues, it appears, were the subject of negotiations between the parties at the time that they submitted the instant dispute to the Third Division of the National Railroad Adjustment Board for resolution; and thus, said issues, are better left, at this time, to the parties themselves to resolve on the property.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.