

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31530
Docket No. MW-31372
96-3-93-3-325**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)**

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

- (1) The Carrier violated the Agreement on February 25 through March 6, 1992 when it assigned Trackman R. R. Forehand to perform foreman's duties while Foreman R. Whitfield was on vacation instead of assigning Trackman W. E. Eubanks who has established and holds seniority as a foreman (Carrier's File 920349 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. W. E. Eubanks shall be compensated for the difference in the rate of pay he received as a trackman and the rate of pay as a foreman for each hour Trackman Forehand was assigned and worked as a foreman during the period of February 25 through March 6, 1992."**

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.

Parties to said dispute waived right of appearance at hearing thereon.

A Foreman in Gang 4112 went on vacation commencing February 25, 1992, through and including March 6, 1992. The Carrier promoted a Trackman without Foreman's seniority who was in Gang 4112 to fill the vacancy.

Claimant has Foreman's seniority, but as of the claim dates, was working in a lower class in another gang. It is the position of the Organization that Carrier ignored Claimant's seniority as a Foreman and ignored his request for the vacancy.

Carrier argues it violated no existing Agreements and/or Rules when it promoted the Trackman to a higher class position even though he had no seniority in the higher class; and secondly, that Claimant never indicated a desire to fill the vacancy until after the vacancy was filled.

After a review of the on-property handling, it is the findings of this Board that Carrier's actions in this instance violated no existing Rules or Agreements that have been brought to this Board's attention.

Rule 1(b) revised April 1, 1975, reads, in pertinent part:

"...employees promoted to a position of higher rank...shall not establish a seniority date until assigned to a bulletined vacancy...."

The aforequoted clearly supports Carrier's right to promote an employee to fill a vacancy in which he has no seniority standing. Thus, the singular act of promoting the Trackman with no Foreman's seniority to the Foreman's vacancy did not violate the Agreement.

The Carrier, in its letter of August 28, 1992, stated:

"...claimant...never expressed the desire to work the vacancy. It was only after the fact (claimant) contacted the Supervisor regarding the vacancy...."

The aforequoted was never challenged by the Organization. The Board does, therefore, conclude that the aforequoted is fact. Since no Rule has been cited in the on-property handling that would preclude Carrier from doing what it did, and since Claimant's request for the vacancy was "after the fact," the claim is denied.

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 25th day of July 1996.