

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32713
Docket No. MW-32195
98-3-94-3-622**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an employee who had no written request on file to fill a temporary vacancy beginning February 3, 1994 instead of assigning said position in compliance with the provisions of Rule A-3 of the Craft Specific Provisions (System File MRL-106).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. D. Evans shall be compensated at the grinder operator's time and one-half rate of pay for all overtime hours worked by Gang 1960 beginning February 3, 1994 and continuing until the position is filled in conformance with the Agreement."**

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 were given due notice of hearing thereon.

On February 3, 1994, a vacancy occurred in the Grinder Operator position on Mobile Crew 1960. Claimant had on file a written request to fill temporary vacancies in Grinder Operator positions. Carrier bulletined the position because it was a vacancy in a permanent position. During the bulletin period, Carrier did not use Claimant for the position but instead utilized the senior qualified employee at the location where the vacancy occurred who desired to fill the vacancy.

This dispute turns on the relationship between Rules A-2 and A-3. Rule A-2, paragraph A provides:

"All permanent and seasonal positions covered by this Agreement will be bulletined. Temporary positions need not be bulletined, but will be filled per Rule A-3 or A-4 (Transfer list - call list).

All positions and vacancies are classified as follows:

1. Temporary positions are positions and vacancies of less than thirty (30) calendar days as well as flex time relief positions.
2. Seasonal positions are positions or vacancies of thirty (30) calendar days or more, but of eleven (11) months or less duration.
3. Permanent positions are positions or vacancies of eleven (11) months or more duration.

For bulletin purposes only, vacancies of thirty (30) calendar days or more created by authorized leave will be bulletined as seasonal vacancies."

Rule A-3 provides:

- "A. A separate transfer list to fill temporary positions of more than five (5) days (but less than 30 days) shall be maintained for each seniority group in each sub-department in each applicable territory as agreed to by General Chairman and Company.

- B. Employees who desire to transfer to temporary vacancies will file a written request of such desire with the designated Company officer. Each request shall be made on the agreed-upon form, must specify the employee's regularly-assigned position and location, the employee's address, home telephone number, and work telephone number, if available. Each request must also specify the type of position and locations to which the employee wishes to be transferred for service. Written request will be accepted for specific positions and/or specific locations, or a more general written request for positions and/or locations will be accepted. Employees in active service who have filed written request to fill temporary positions shall be transferred to available temporary positions in seniority order for this service."**

The parties agree that a permanent Grinder Operator position became vacant when the incumbent bid to another position, and that Carrier acted properly in bulletining the permanent vacancy. Carrier maintains that Rule A-2 divides all positions and vacancies into temporary, seasonal and permanent. When the position at issue became vacant, it created a permanent vacancy which Carrier was obliged to bulletin, not to fill from the transfer list provided for under Rule A-3. Carrier's position is a reasonable interpretation of the relationship between Rules A-2 and A-3.

The Organization counters that during the bulletining period the position was filled on a temporary basis by an employee other than the Claimant. The Organization observes that Rule A-3 applies to temporary positions and to temporary vacancies. During the bulletining period, in the Organization's view, there was a temporary vacancy in this permanent position and Carrier was obliged to fill it in accordance with Rule A-3. The Organization's position presents an equally reasonable interpretation of the relationship between Rules A-2 and A-3.

When faced with two equally reasonable interpretations of ambiguous contract language, the parties' past practice can provide very significant evidence of their probable intent. Throughout the handling on the property, Carrier maintained that it handled the vacancy pursuant to the practice in effect since Carrier began its operations. The Organization never denied this practice during handling on the property. Accordingly, we find, in accordance with the parties' past practice, that

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Carrier's interpretation of the relationship between Rules A-2 and A-3 governs this dispute.

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 19th day of August 1998.