Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33515
Docket No. MW-32466
99-3-95-3-380

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier recalled junior employes R. E. Benson, Jr. and K. Threatt to fill a temporary section laborer position on Section Crew 32E at Muscatine, Iowa on February 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 and 21, 1994, instead of recalling and assigning senior furloughed Section Laborer M. T. Locey (System File C-15-94-B040-01/8-00199 CMP).

(2) As a consequence of the violation referred to in Part (1) above, Section Laborer M. T. Locey shall be allowed one hundred four (104) hours' pay at his pro rata straight time rate for February 1 through 18, 1994 and eight hours' holiday pay for February 21, 1994."

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.

By letter of March 28, 1994, the Organization alleged Carrier violation of the Agreement in failing to call the Claimant for available work as Section Laborer. The Organization argues that the Claimant was the senior employee and not called to work with section Crew 32E at Muscatine, Iowa, while two junior employees were called and performed work. The Organization particularly maintains that the Carrier violated Rule 8 (c) in that the Claimant called the Personnel Office for any available work for which his seniority entitled and was then run around as junior employees were called.

The Carrier argues that no violation occurred in that the Claimant failed to make a proper request for available work. The Carrier contends that:

> ". . . a general request for any and all work is not a proper request under the current agreement . . . it is up to the individual under current Schedule Rule 8 (c) to make a specific request which includes follow-up in writing to the Carrier's Personnel Office."

The Carrier argues that the Claimant did not request from Personnel to work the specific job in dispute.

As a preliminary point, this Board is confronted with a Carrier letter from Mr. Cook of Personnel and a letter of July 13, 1995 from the General Chairman to the Carrier's Vice President of Labor Relations. There is no record of either letter exchanged while the dispute was being handled on the property. Without such proof, the Board has no alternative except to consider them as coming too late for our consideration. On the merits, the claim at bar rests on rule interpretation and compliance. Rule 8 (c) states:

> "New position or vacancies of thirty (30) days or less duration . . . may be filled without bulletining, except that senior, available, qualified employes on proper request to the division engineer will be given preference."

The Board has carefully read the Rule, supra, and finds that this claim turns on whether there exists sufficient probative evidence that a "proper request" was made. The Organization provided probative evidence that the Claimant made a telephone call to the Carrier. The Claimant's handwritten note and documentation support the fact that he called in January from the Clinton Section House to "see where I could go" and awaited a call back either there or at home where he had an answering machine. The Claimant states without rebuttal that, that is how he "got called back to work in 1993."

The Board, however, finds no rebuttal to the Carrier's assertions that the telephone call is not a proper request under the Rule. The Carrier's position throughout this dispute is that there must be a "specific request which includes follow-up in writing." On the evidence at bar, and the Rule language before us, this Board cannot conclude that the Organization has met its burden of proof. The Carrier's further assertion that this has been a continuing problem with the Organization and that it had "advised in the past" that a general request does not comply with the Agreement is not rebutted. In full consideration of all the issues at bar, this Board cannot find the Carrier in violation of the Rule. There is insufficient proof in this record that the Claimant made a "proper request" under the language of this Rule. We find no supporting letters, documents or evidence of a substantial nature to prove the Organization's claim. The claim must be denied under the language and facts at bar.

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 22nd day of September 1999.