

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35437
Docket No. MW-34297
01-3-97-3-888**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. J. Runge from the truck operator position on Utility Crew No. 4 to which he was assigned within Bulletin No. 252A dated August 12, 1996 (System file R1.094 / S-00292).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Runge shall be compensated for all wage loss suffered, including mileage and travel time spent reporting to other than his assigned position, beginning August 12, 1996 and continuing until such time as the violation ceases. Furthermore, the Claimant shall receive proper credit for fringe benefits and vacation purposes 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 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.

Just prior to the alleged violation, the Claimant held an Assistant Foreman position at Humboldt Yard. He was paid as such, but he was assigned to work as a Truck Operator due to a manpower shortage in the classification. He successfully bid for and, by bulletin dated August 8, 1996, was awarded a Truck Operator position reporting at Detroit Lakes, Minnesota, which was 45 miles closer to his home in Long Prairie, Minnesota. On August 12, 1996, the Claimant requested that he be released to assume the Detroit Lakes position. Due to the shortage of Truck Operators available to Humboldt Yard, the Claimant was held over in that assignment until November 12, 1996.

The Organization alleges that the holdover violated the Agreement and entitled the Claimant to certain economic benefits, which included travel and meal expenses per Rules 35 and 36. The Carrier maintains that the holdover did not violate the Agreement and the economic benefits sought are not warranted in any event.

Oddly enough, both parties cite Rule 10(h) in support of their respective positions. However, their views of its application are diametrically opposed. It reads, in pertinent part, as follows:

**“RULE 10
BULLETINS**

* * *

- (h) An employe making application for and who is assigned to a bulletined position must take the position within twenty (20) calendar days from the date of assignment, unless he is prevented from doing so because of illness or other reasonable cause.

During the twenty (20) calendar day period referenced above, an employe assigned to a bulletined position who requests to be released from his former assignment to take such position may be held to perform temuorary relief on his former assignment in the event no qualified relief is available. When qualified relief is

available to protect the former assignment, the employee must be permitted to take the new assignment.” (Emphasis added.)

The Carrier maintains that Rule 10(h) specifically permits it to hold over an employee if no relief is available. We agree in part. On this record, although the parties dispute the availability of relief, the Organization has not proven that such relief was available within the meaning of the Rule. The Carrier was, therefore, entitled to hold over the Claimant to the extent permitted by the Rule.

The Organization contends, however, that Rule 10(h) only permits the Carrier to hold the Claimant in his former position of Assistant Foreman and not his assignment of Truck Operator. But that is not what the Rule says. Read carefully, it talks about withholding an employee from a position to provide relief on a former assignment. On its face, the Rule does not explicitly restrict the Carrier as the Organization contends. No bargaining history exists in the record to show otherwise.

However, Rule 10(h) rather clearly limits the permissible length of the holdover to the 20 calendar day period specified. It is not an indefinite right. We must find, therefore, that Carrier did violate the Agreement when it refused to release the Claimant to his new position after 20 calendar days - after August 28.

No actual wage or overtime loss has been shown by the record. Similarly, Rule 35 expenses do not appear to be applicable because that Rule applies to employees who are required to live away from home. There is no evidence the Claimant did so. He just commuted a longer distance from home than would otherwise have been the case. The same is true of the meal allowance. Because the applicability of the meal allowance was a subject of dispute on the property, the Organization had the burden of proof to establish that it was a valid entitlement. The record fails to do so.

Mileage expenses, however are another matter. We find such expenses to be due and owing to the Claimant by virtue of Rule 36 and the rationale expressed in Third Division Awards 29625 and 30400, involving these same parties. Contrary to the Carrier’s belief, Rule 36 was explicitly cited in the original claim as well as the Organization’s November 8, 1997 report of conference.

Because the Claimant received higher pay as a held over Assistant Foreman than he would have had he been released to his new position not later than August 28, 1996,

it appears he may not have actually lost money overall. Under the circumstances, it appears that the Carrier should be entitled to offset against mileage expenses due him the amount of the greater pay earned by being held over. We so find. Accordingly, this case is remanded to the parties to perform the necessary calculations.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of April, 2001.