

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35568
Docket No. MW-33316
01-3-96-3-865

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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. Bylin from the section foreman’s position at Thief River Falls, Minnesota, to which he was assigned by Bulletin No. 253A on October 2, 1995 (System File RI.051/8-00242).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Bylin shall be ‘. . . allowed to take his assigned position at Thief River Falls M.N. and be reimbursed for any loss wages beginning October 2, 1995 and continuing until such time as this violation is corrected as well as have all overtime, vacation, fringe benefits, and other rights, including seniority restored.’”

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.

The Claimant successfully bid for a position of Section Foreman, which he was awarded by bulletin dated October 2, 1995. However, the Carrier did not allow him to begin service in his new position until November 6, 1995 and used another employee to cover the Section Foreman's position in the interim, alleging but not proving the unavailability of anyone to replace the Claimant on his former position of Roadway Equipment Helper. Although the operative dates and the named Claimant are different in this particular case, the issues presented are indistinguishable from the issues and arguments presented in Third Division Award 34982. In part pertinent to this matter, that precedent decision reads as follows:

“Although the Organization technically has shown an Agreement violation in Carrier’s untimely release of Claimant from his Helper position, the unrefuted evidence of record shows that in fact Claimant earned more compensation if the position to which he was held than he would have earned in the position to which he should have been released. Neither fact, contract or logic support the assertion that the overtime generated by Claimant’s continued incumbency on the Helper position should have been paid at the Assistant Foreman rate of pay. To the contrary, logic suggests that if he had been on the Assistant Foreman position, he would not have worked that Helper position overtime at all. This Board has long held that it does not award punitive damages but rather awards remedial or “make whole” monetary damages, so as to put an employee in the position s/he would have been in but for the Carrier’s Agreement violation. The proven Agreement violation in this case notwithstanding, in the peculiar circumstance of this factual record the Claimant suffered no loss of income and accordingly no award of monetary damages are in order.”

On the basis of the foregoing, Part 1 of the claim is sustained, but Part 2 is sustained only to the extent that the Claimant's personnel record shall be adjusted to show a seniority date of October 2, 1995 as Section Foreman. The request for monetary damages must be denied because the Claimant earned more in the Roadway Equipment Helper position than he would have earned for the same period of time in the Section Foreman's position.

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 24th day of July, 2001.