

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35770  
Docket No. MW-34357  
01-3-97-3-975**

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 Employes  
(Bessemer and Lake Erie Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Foreman R. L. Diehl who was regularly assigned at Calvin, Pennsylvania to fill the vacation vacancy of the foreman headquartered at Greenville, Pennsylvania and upgraded and assigned Mr. J. Smith to fill the foreman’s vacancy at Calvin, Pennsylvania beginning December 2, 1996 and continuing, instead of assigning furloughed Foreman J. M. Artello (Case No. 411).
- (2) As a consequence of the violation referred to in Parts (1) above, Foreman J. M. Artello shall be compensated at the appropriate rate of pay for all hours worked by the laborer upgraded to fill the foreman’s position at Calvin, Pennsylvania on December 2, 1996 and continuing.”

**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.

This claim arose when the absence of Greenville, Pennsylvania, Foreman Aiken resulted from his vacation and holiday usage in December 1996. The absence was covered by the temporary transfer of a working Foreman at Calvin, Pennsylvania,

beginning December 2. The resulting absence at Calvin was covered by upgrading the senior working Laborer. The Claimant, who was on furlough status, contends he should have been recalled to fill the Greenville vacancy.

Although the claim cites several Rules as having been violated, central to the validity of this claim is the contention that the Carrier was required to advertise the Greenville vacancy for filling by bid. If so, the Claimant would have been the senior bidder.

After careful review of the Submissions and pertinent Agreement provisions, we find this claim must be denied. Rule 12(b) is quite clear that absences resulting from vacation usage are not vacancies that require advertisement as the Organization and the Claimant contend. The fact that the Carrier's replies on the property referred to the vacation absence as a "vacancy" does not alter the operation of Rule 12(b).

Our review of the various Rules cited by the Organization and the Claimant shows them to be inapplicable to the facts of this record.

In view of the foregoing, we must deny the claim.

**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 24th day of October, 2001.