

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35814
Docket No. MW-33158
01-3-96-3-588**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier failed to recall furloughed Seniority District 15 Track Inspector D. A. Heil to fill a temporary track inspector vacancy on February 7, 1994 and continuing (System File T-D-756-H/MWB 94-07-26AV)**
- 2. As a consequence of the aforesaid violation, Claimant D. A. Heil shall:**

‘ . . . receive straight time pay for a total of 216 hours at the current track inspector’s rate of pay. We also request that Claimant receive pay equal to any and all overtime worked by Mr. Meier during claimed period. We further request that Claimant be accredited for any and all other benefits, vacation and lump sum payment accreditation, insurance, retirement and unemployment payments.’”

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 matter arises out of the same dispute decided by the Board in Third Division Award 35813. As described in that Award, as of February 7, 1994, G. D. Fimreite and D. M. Meier were Track Foremen; Meier was junior to Fimreite; and J. Lake was a Track Inspector.

At the relevant time of the dispute discussed in Award 35813, the Claimant was a furloughed Track Inspector. According to the record, the Claimant had filed his name and address under Rule 9 for retention of seniority purposes.

As described in Award 35813, in February 1994, Lake began to perform training functions rather than his Track Inspector duties. During the time Lake performed the training functions, his Track Inspector position was filled by Meier.

Although the Organization argued in Award 35813 that Fimreite should have been assigned to Lake's vacated position as a result of the Carrier having to bulletin that position as a vacancy for more than 30 days under Rule 20(A) ("All vacancies and new positions of more than thirty (30) calendar days' duration shall be bulletined in the seniority district for the sub-department involved"), the Organization's position here is that the Carrier should have filled that temporary vacancy by recalling the Claimant rather than assigning the position to Meier.

In Award 35813, the Board found that Lake's Track Inspector position had been vacated for more than 30 days and, under Rule 20(A), should have been bulletined. In Award 35813, we fashioned a make whole remedy for the claimant in that case, Fimreite, who was senior to Meier.

Based on the record before us in this matter, our decision in Award 35813 moots this case. From what we can tell in this case, the Claimant was furloughed and junior to Fimreite who received the remedy in Award 35813. There is nothing in this record which sufficiently shows that the Claimant rather than Fimreite should have received the remedy for the Carrier's failure to bulletin Lake's vacated Track Inspector position.

This claim shall therefore be denied.

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 14th day of November, 2001.