

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36269
Docket No. MW-35784
02-3-99-3-770

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to assign Mr. D. P. Dziengel to the extra gang laborer vacancy on a floating maintenance crew beginning January 12 through 22, 1998 and for the vacancy on said gang beginning February 23 through 26, 1998, in accordance with the provisions of Rule 14(b) (System File R1.247/8-00219-022).
- (2) The Agreement was further violated when the Carrier failed to assign Mr. A. J. Pereira to the extra gang laborer vacancy on a floating maintenance crew beginning January 26 through February 19, 1998, in accordance with the provisions of Rule 14 (b) (System File R1.246/8-00219-021.
- (3) As a consequence of the violation referred to in Part (1) above, Claimant D. P. Dziengel shall now be compensated for one hundred twenty (120) hours' pay at the extra gang laborer's straight time rate of pay and he shall have all overtime, vacation, fringe benefits and other rights restored which were lost to him as a result of this violation.
- (4) As a consequence of the violation referred to in Part (2) above, Claimant A. J. Pereira shall now be compensated for one hundred sixty (160) hours' pay at the extra gang laborer's straight time rate of pay and he shall have all overtime, vacation, fringe benefits and

other rights restored which were lost to him as a result of this 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.

The two cases consolidated before the Board raise the same question: was G. L. Buse on the extra gang call list when he was assigned to short vacancies for the period January 12 through 22 and January 26 through February 19, 1998. If he was not on the call list, the claims must be sustained because both Claimants were eligible to be called. If he was on the call list, then the claims must be denied because there is no dispute that Buse was the senior employee and stood to be called before either the Claimant.

The record reveals that there is a factual conflict on this crucial issue. The Organization submitted a copy of the call list which, it claimed, showed that Buse's name was not included. The Carrier denied the claims, contending that Buse had placed himself on the call list. The Organization thereafter filed an appeal, asserting that the Carrier failed to produce anything other than self-serving statements to refute the claims. In its denial of the appeal on June 16, 1998, the Carrier attached thereto a copy of the call list utilized in filling the disputed positions. Written on the call list is the notation, “add – Gary Buse, Ex.G LAB 4/A & Helper.” The Carrier stated that the notation had been added by Mr. Hugo, the individual responsible for maintaining the list.

The Board considered the opposing positions of the parties on this matter and notes that the discrepancies between the call list produced by the Organization and the call list produced by the Carrier raise the specter of an irreconcilable conflict in the evidence. As an appellate body, we are unable to resolve such disputes. Absent any additional evidence in the record to illuminate the Board on this subject, the Organization cannot meet its burden of proof. Accordingly, the claims must 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 28th day of October 2002.