

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36277  
Docket No. MW-35705  
02-3-99-3-651

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**PARTIES TO DISPUTE:** ( (Brotherhood of Maintenance of Way Employees  
(Burlington Northern Santa Fe Railway  
( (former 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 assign Mr. M. J. Decker to a Group 5 Machine Operator position by Bulletin RSG-9812A on June 1, 1998 and instead assigned the position to a junior employe (System File B-M-609-H/MWB 98-09-30AB BNR).**
- (2) The Agreement was violated when the Carrier failed to assign Mr. T. C. Anderson to a truck driver position at Hardin, Montana by Bulletin Y-06A on May 18, 1998 and instead assigned the position to a junior employe (System File B-M-610-H/MWB 98-09-30AC).**
- (3) The Agreement was violated when the Carrier failed to assign Mr. J. J. Danielson to a track inspector position at St. Cloud, Minnesota by Bulletin TC-13 on June 8, 1998 (System File T-D-1564-H/MWB 98-09-30AL).**
- (4) The Agreement was violated when the Carrier failed to assign Mr. K. K. Rieland to a sectionman position at Minneapolis, Minnesota by Bulletin TC-14 on June 8, 1998 and instead assigned the position to a junior employe (System File T-D-1575-B/MWB 98-10-06AF).**
- (5) The Agreement was violated when the Carrier failed to assign Mr. B. A. Halvorson to a grinder position at Dilworth, Minnesota by Bulletin W-12 on May 18, 1998 (System File T-D-1576-B/MWB 98-10-06AG).**

- (6) The Agreement was violated when the Carrier failed to assign Mr. J. A. Severson to a sectionman position on Region Gang RP-07 by Bulletin RSG-9812A on June 1, 1998 and instead assigned a junior employe (System File T-D-1577-B/MWB 98-10-06AH).

- (7) As a consequence of the violation referred to in Part (1) above, Claimant M. J. Decker shall:

' . . . be assigned in accordance with his seniority and bid application. We further request that Claimant be made whole for any and all losses, including pay for difference in rates of pay between that of Group 5 machine operator and the rates of pay he may receive, reimbursement for the loss of any and all overtime opportunity beginning on June 1, 1998 and continuing until Claimant is assigned thereto, and future right of displacement or bidding rights along with corresponding lost earnings. In the event that Claimant is furloughed or abolished from his assignment prior to the abolishment of his desired Group 5 machine operator's position on RP-11, we are requesting that he receive eight hours pay for each assigned work day, and lost overtime opportunity. We are also requesting that Claimant be accredited for any and all other benefits, including accreditation for Railroad Retirement, vacation, insurance coverages, and job protection benefits. We are also requesting that Claimant receive reimbursed mileage for any and all miles he travels that would be greater distances than the assignment on RP-11. We also request that he receive travel time pay for all such miles traveled, paid at the two minutes per mile rate.'

- (8) As a consequence of the violation referred to in Part (2) above, Claimant T. C. Anderson shall:

' . . . be assigned in accordance with his seniority and bid application. We further request that Claimant be made whole for any and all losses, including pay for difference in

rates of pay between that of truck driver and the rates of pay he may receive, reimbursement for the loss of any and all overtime opportunity beginning on May 18, 1998 and continuing until Claimant is assigned thereto, and future right of displacement or bidding rights along with corresponding lost earnings. We are also requesting that Claimant be accredited for any and all other benefits, including accreditation for Railroad Retirement, vacation, insurance coverages, and job protection benefits.'

- (9) As a consequence of the violation referred to in Part (3) above, Claimant J. J. Danielson shall:

'... be assigned in accordance with his seniority and bid application. We insist that Claimant receive a Track Subdepartment, Rank A and B seniority date of June 8, 1998. We further request that Claimant be made whole for any and all losses, including pay for difference in rates of pay between that of Rank A Track Inspector and the rates of pay he may receive, reimbursement for the loss of any and all overtime opportunity beginning on June 8, 1998 and continuing until Claimant is assigned thereto, and future right of displacement or bidding rights along with corresponding lost earnings. In the event that Claimant is furloughed we are requesting that he receive eight hours pay for each assigned work day, and lost overtime opportunity. We are also requesting that Claimant be accredited for any and all other benefits, including accreditation for Railroad Retirement, vacation, insurance coverages, and job protection benefits.'

- (10) As a consequence of the violation referred to in Part (4) above, Claimant K. K. Rieland shall now be compensated for each day commencing June 8, 1998:

'... for eight (8) hours straight time and all overtime worked on the position until such time as Mr. Rieland is properly

assigned thereto and until the violation ceases. This claim is also for all expenses Mr. Rieland incurs as a result of having to travel further from his home to the Regional Gang assignment he is currently on. \*\*\*'

- (11) As a consequence of the violation referred to in Part (5) above, Claimant B. A. Halvorson shall now be allowed a seniority date of May 18, 1998 as a grinder operator on Seniority District 14 and he shall be compensated for each day commencing May 18, 1998 for:

'... eight (8) hours straight time and all overtime worked on the position until such time as Mr. Halvorson is properly assigned thereto and until the violation ceases. This claim is also for all expenses Mr. Halvorson incurs as a result of having to travel from his home to the Gang assignment he is currently on. \*\*\*'

- (12) As a consequence of the violation referred to in Part (6) above, Claimant J. A. Severson shall now be compensated for each day commencing June 1, 1998 for:

'... eight (8) hours straight time and all overtime worked on the position until such time as Mr. Severson is properly assigned thereto and until the violation ceases. This claim is also for all expenses Mr. Severson incurs as a result of having to travel further from his home to the Regional Gang assignment he is currently on. \*\*\*''

**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.

Article XVI, Section 3(b) of the 1996 National Agreement reads as follows:

**"An individual who bids and is subsequently assigned to work on a regional and system-wide production gang established by a covered carrier may be held to that gang for a period of no more than 30 days. After such time, the employee will be entitled to bid for other jobs with the carrier, subject to the limitation that no more than ten percent of a gang may bid off during a one week period."**

Article XVI, Section 3(b) clearly modifies the Bulletin Procedure and Assignment Procedure encompassed in Rules 21 and 22, particularly as to the final phrase which states:

**"[N]o more than ten percent of a gang may bid off during a one week period."**

In the disputes here under review, all Claimants submitted bids for positions outside their gangs; they had all been assigned to the gangs for more than 30 days; and no question was raised as to their qualifications for bidding on various bulletined positions. All Claimants were denied such positions based on the ten percent limitation quoted above. Review of the dispute in Part (1) of the Statement of Claim is sufficient to apply to Parts (2) through (6).

The phrase "bid off" might be read to apply to the timing of an employee's bid on a bulletin position or the timing of the effective starting date of the assignment. The Carrier reasonably utilizes the latter definition, but, assuming uniform application, the outcome would be identical whichever definition is used.

The Claimant was assigned to Region/System Gang RP-06, to which 35 employees (as stated by the Carrier) or 37 employees (as stated by the Organization) were assigned. "No more than ten percent" of either number is three employees; a fourth employee would constitute more than the ten percent limitation. The Claimant bid on two Group 5 positions advertised on bulletin RSG-9812 dated June 1, 1998. Bulletin RSG-9812A assigned the positions on June 10, 1998. The "week" in question commenced either Monday, June 1 (when bids were open) or Monday, June 8 (when bid assignments were

made). The Carrier provided evidence of three RP-06 employees senior to the Claimant who were assigned to bid positions during the week of June 8.

This information is confirmed by the Organization in its appeal letter to the Carrier during the claim-handling procedure, which stated in pertinent part as follows:

**"Gang RP-06 had 37 positions. In accordance with the provisions of Article XVI, Section 3b, the Carrier was obligated to allow 3.7, or 4 employees rounded off to the nearest whole figure, to bid off Gang RP-06 per week. Below is a review of job vacancies advertised, due to employees bidding off of Region/System Gang RP-06, on a weekly basis since April 13, through the present time. . . ."**

**Among the weeks listed in the letter are the following:**

**\* \* \***

**June 1, 1998:**

**3 employees were allowed to leave the gang - 8.1 %**

**June 8, 1998:**

**0 employees were allowed to leave the gang - 0 %"**

As noted above, the wording of Article XVI, Section 3(b) does not permit rounding off. "No more than ten percent" can mean only ten percent or less. "Rounding up" to four employees, using the Organization's number of 37 gang employees, would be 10.8%, or, using the Carrier's number of 35, would be 11.4% - both in excess of the specified limit.

The Board infers that the Organization's listing of three employees "allowed to leave the gang" during the week of June 1 refers to the same three employees whom the Carrier stated "bid off" to positions commencing on June 10. It must also be noted that the Organization's review of many other weeks is not relevant here.

The Organization further argues that the Carrier is limiting employees to three per "bulletin," rather than three per "week," but no factual support for this contention is provided.

Finally, the Organization points to inequities in Article XVI, Section 3(b), in that employees in a single gang may be subject to varying frequencies of bulletin posting,

dependent on different Agreements under which employees are covered. All such Agreements are, however, subject to National Agreement Article XVI. Remedy for this, however, does not rest with the Board.

The denial of bids involved in these claims was in conformance with Article XVI, Section 3(b), which, as noted above, does modify Articles 21 and 22 to a limited extent, while preserving all other rights under these Articles.

**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.