

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36761
Docket No. MW-35988
03-3-00-3-84**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier force assigned Mr. S. Woods to a foreman’s position on Bulletin T-005-99 on January 25, 1999 to which he had placed no bid upon rather than assigning Mr. T. Miller who had placed a bid thereto and was qualified to perform the work (Claim No. 09-99).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. T. Miller shall be listed with a January 25, 1999 seniority date, allowed the difference in pay between the wages he earned as a crane operator and foreman as well as all overtime earned by Mr. Woods on the foreman’s position in question.”**

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 dispute in this case arises because of the Carrier's forced assignment of Track Foreman S. Woods to a Track Foreman's position at Keenan rather than awarding the position to the Claimant who bid on the position.

Rule 3(c) provides:

“(c) Vacancies or new positions will be filled first from among those employees who hold seniority in the classification of the vacancy or new position. Assignment will be made from that group in the following order:

- (1) Senior qualified applicant.
- (2) If there is no qualified applicant from among the employees holding such seniority, the junior man holding such seniority and currently assigned at the headquarters point of the vacancy or position will be forced to the assignment.
- (3) There being no such employees at the headquarters point, then the junior qualified man holding such seniority in the class will be forced to the assignment.”

The record establishes that the Claimant held seniority as an Assistant Track Foreman, but not as a Foreman. Woods, on the other hand, held seniority as a Foreman and was assigned to the headquarters point. Force assignment of Woods was therefore permissible under Rule 3(c)(2) - “If there is no qualified applicant from among the employees holding such seniority, the junior man holding such seniority and currently assigned at the headquarters point of the vacancy or position will be forced to the assignment.” Because the Claimant held no Foreman's seniority and the position in dispute was for a Foreman, the Claimant was not a “. . .

qualified applicant . . . holding such seniority. . . ." No violation of the Agreement has been shown.

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 29th day of December 2003.