

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38991  
Docket No. MW-37352  
08-3-NRAB-00003-020381  
(02-3-381)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

(Brotherhood of Maintenance of Way Employees  
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 call and assign Mr. R. A. Dosch from the call list to fill a short vacancy welder foreman position at Detroit Lakes, Minnesota during the week of April 16 through 20, 2001 and instead assigned Mr. C. J. Frey, Jr. who was not on the call list. (System File R1-670/8-00219-073).
2. As a consequence of the violation referred to in Part (1) above, Claimant R. A. Dosch ‘. . . shall now be reimbursed for the equivalent of forty (40) hours at the Welder Foreman rate of pay (\$18.48 X 40 = \$739.20) and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above 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.

On April 28, 2001, the Organization filed the instant claim alleging that the Carrier violated Rule 14 of the Agreement dated October 1, 1987 when it failed to call the Claimant to fill a short vacancy of Welder Foreman at Detroit Lakes, Minnesota, during the week of April 16-20, 2001. During the relevant time period, it is undisputed that the Claimant was furloughed and awaiting recall and as a result, placed his name on the System Welders call list in accordance with Rule 14. J. A. Johnson, the Welder Foreman, was not available to work his assigned position during the relevant time period because he was released to assume his new position on Friday April 13, 2001. Instead of calling the Claimant, whose name appeared on a call list, the Carrier filled the short vacancy created by the departure of Welder Foreman Johnson with C. Frey who was working the Welder position on the Detroit Lakes Welding Crew. While it is undisputed that Frey was senior to the Claimant as a Welder Foreman, it is also undisputed that Frey's name was not among those on the System Welders call list. Accordingly, the Organization maintains that under these circumstances, the Carrier was obligated to call Frey to fill this short term vacancy. The Carrier defended its action by asserting that it properly filled the short term vacancy in accordance with Rule 11 by assigning the most senior available employee to the Welder Foreman position. In this regard, the Carrier asserts that Rule 14 is not the applicable Rule because by its very title, it applies to "Increasing Forces." Because the Carrier argues that at no relevant time period did it "increase forces," it asserts that Rule 14 has no application.

Having carefully reviewed the record, the Board concludes that Rule 11 is the applicable Rule. Rule 11 -Assignment Procedure provides, in relevant part, as follows:

- "(a) Except as otherwise provided in this rule, vacancies or new positions will be filled by employees holding seniority in the rank in which the vacancy or new position occurs.

In the event they are not filled as provided above, then they will be filled by the senior, qualified applicant in the next succeeding lower rank(s) in that seniority group. If the vacancy or new position is not so filled by an employee in the seniority group in which the vacancy occurs, the senior, qualified applicant holding seniority in the same sub-department in which the vacancy or new position occurs will be given consideration based on their earliest date in that sub-department.

\* \* \*

- (d) New positions or vacancies of thirty (30) calendar days or less shall be considered temporary and will be filled without bulletining in accordance with Rule 14."

It is clear that the five day vacancy involved in the instant dispute was a temporary vacancy, and hence, Rule 11 (d) provides that the procedure for filling this temporary vacancy is governed by Rule 14. In relevant part, Rule 14 provides:

"Qualified employees on a call list who have indicated they wish to protect work in a particular group and rank in which the vacancy occurs will be called in seniority order and must protect the vacancy for which called (except in cases of personal illness or other unavoidable cause)."

While Welder Frey's seniority as a Welding Foreman is superior to that of the Claimant, a review of the System Welders call list reveals that Frey had not placed his name on such list to fill temporary vacancies in that capacity. Accordingly, Frey was not eligible under Rule 14 to fill the temporary vacancy that existed on the Welder Foreman position.

Finally, the Board reviewed the other defenses offered by the Carrier and finds them to be without merit. The instant claim will therefore be sustained.

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**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of March 2008.