

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39617
Docket No. MW-38918
09-3-NRAB-00003-050358
(05-3-358)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to allow Assistant Foreman J. Scott to report to his bulletin assignment (per Bulletin Award #SO-140A dated June 3, 2003) as assistant foreman to Section #703 at Cudahy, Wisconsin beginning June 4 and continuing through July 31, 2003 and instead held him on his former position at Columbus, Wisconsin (System File C-26-03-220-11/8-00405-009 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Scott shall now be compensated for ‘. . . the additional time spent commuting in the amount of \$1,927.15 and out-of-pocket mileage incurred in the amount of \$2,217.60 in driving to and from Columbus, WI each work day from June 4 through July 31, 2003 as a result of the Carrier’s decision to withhold claimant from reporting to this bulletin assignment.’”**

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 basic facts are not in dispute. The Claimant lived in Pleasant Prairie, Wisconsin, which is due south of Milwaukee just north of the Illinois state line. He held an Assistant Foreman assignment at Columbus, Wisconsin, which was some 112 road miles one-way to the northwest of his home. He bid on and was awarded an Assistant Foreman assignment at Cudahy, Wisconsin, by Bulletin No. SO-140A dated June 3, 2003. The assignment at Cudahy required a drive of only 35 road miles one-way from his home. Due to manpower shortages and/or the lack of bidders to fill the vacancy he would leave behind, the Carrier did not release him to assume the Cudahy assignment until August 1, 2003. The claim is for the extra mileage and commute time the Claimant suffered as a result of being held on his former assignment.

In addition to the foregoing fact summary, the on-property record contained extensive discussion about the extent to which the Carrier failed to employ sufficient manpower. The Carrier's response was that it made every effort to fill the Claimant's former assignment and that it did employ sufficient manpower, but there was an Organization effort to discourage employees from bidding such positions. The Carrier introduced a number of bulletin awards for the Claimant's former assignment that received no bidders.

The instant dispute is not one of first impression. Interestingly, both parties rely on differing interpretations of Rule 8(e) in their Submissions. Both parties introduced a number of prior Awards that deal with this same general subject matter. They have all been carefully reviewed. With one exception, however, all of the Awards are not on point due to different parties, different facts, or significantly different rule language.

Rule 8(e) reads in full as follows:

“An employe assigned to a position on bulletin, unless engaged in temporary or special service, or on leave of absence in accordance with provisions of Paragraphs (a) and (b) of Rule 17, must accept the position and perform service thereon within ten (10) calendar days from the date of assignment or forfeit his rights to the position.

NOTE: In the application of Rule 8(e) in a case where the supervisor fails to release the employe sufficient to permit him assuming work on the new position to which he is assigned within a period of ten (10) calendar days from the date of assignment, the ten (10) calendar day period will be extended sufficient to include the delay, with the understanding that when the employe is released, he will then proceed to his new position without further delay.”

The Carrier's position is that Rule 8(e) allows it to hold an individual on a position until such time as qualified relief is available. It said so in its May 14, 2004 denial on the property. The Organization did not effectively refute this contention in its next appeal of the claim. The Carrier reiterated this interpretation in its April 28, 2005 letter. This letter was the Carrier's final contribution to the on-property record. For reasons not explained in the Submission, this letter was properly part of the record, but it was not included in the Organization's Submission. In the letter, the Carrier wrote, "Further, Rule 8(e) provides for an automatic extension of time

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that Carrier may hold an employee without penalty.” The Organization did not respond to the letter.

Third Division Award 36290 is found to be on point. It dealt with a fact pattern containing no significant differences from the instant dispute. The Award found in favor of the Carrier’s interpretation and application of Rule 8(e). Our review of the Award shows the analysis and logic to be sound and deserving of being followed here. Consequently, we must find that the Organization failed to satisfy its burden of proof to establish a violation of the Agreement as alleged in the claim.

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 1st day of April 2009.