

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39911
Docket No. MW-38126
09-3-NRAB-00003-040007
(04-3-7)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(BNSF Railway Company (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 bulletin the Group 3/4 Machine Operator positions (Tie-Insertor X63-0061, Tie Crane X60-0099 and Tamper X56-0106) at Minot, North Dakota in accordance with Rule 20 of the Agreement (System File T-D-2345-W/11-01-0346 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operators K. Swart, D. Wald and W. Dykhoff shall now each ‘. . . receive pay for eight hours each work day, Monday through Friday, between June 4, 2001 until August 9, 2001, the report date of the bulletin. We further request that each claimant receive any and all overtime received by any employees performing the machine operator’s duties, pay to be at the group 3/4 machine operators overtime rate of pay for the claimed dates. We further request that Claimant be accredited for any and all other benefits, vacation and lump sum payment accreditation, insurance, retirement and unemployment payments and any compensation due to.’”**

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 Organization maintains that the Carrier violated the Agreement when Group 3/4 Machine Operator positions were bulletined approximately 35 days after the positions began working on June 11 through 13, 2001. The Carrier counters that the positions were originally temporary positions that began on June 11, 2001. When the Roadmaster learned that the positions were going to last longer, he requested the Manpower Office to bulletin the positions. That request came less than 30 days after the positions began working the temporary assignment.

According to the Organization, Rule 20A requires that new positions of more than 30 days must be bulletined in the seniority district for the sub-departments involved. These positions were going to last more than 30 days and should have been bulletined and assigned within 30 days. According to the Carrier, there was no way for the Roadmaster to know that the positions would be funded for more than 30 days when they were originally bulletined. The Organization asserts that the Carrier knew or should have known that these positions were for more than 30 days – and should have bulletined them from the inception.

Rule 20 A provides:

“All vacancies and new positions of more than thirty (30) calendar days duration shall be bulletined in the seniority district for the sub-departments involved.”

Rule 19 A provides, in pertinent part:

“A new position or vacancy of thirty (30) calendar days or less duration, shall be considered temporary and may be filled without bulletining. . . . If such vacancy is to be filled, the ‘eligible list’ referred to in Rule 18 will be used. If such vacancy is on any other position and is filled, preference will be given to the senior qualified employee who is not assigned in the rank in which the vacancy occurs and who has on file a written request to fill such vacancy.”

The Board carefully reviewed the record evidence. Each original Bulletin for the Group 3/4 Machine Operator positions contains the notation “less than 30 day position starting 6/11/2001.” There is no support for the Organization’s argument that the positions were known to be 30-day or longer positions from the outset. There is support that Roadmaster Busch contacted the Manpower Office on July 5 after learning from the Division Engineer that a Mini Tie Gang and more material was going to be brought in – and the positions would go beyond 30 days. The positions were posted in the next Bulletin.

The evidence indicates that the three Group 3/4 Machine Operator assignments were originally temporary. The Carrier began the bulletining process on July 5 upon learning that the positions were going to be needed for greater than 30 days. The bulletining process began less than 30 days after the assignments began working.

In a Rules case, the burden is on the Organization to prove its claim. That burden has not been met. Accordingly, the claim is denied.

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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 31st day of August 2009.