

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40091
Docket No. MW-39297
09-3-NRAB-00003-060128
(06-3-128)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 Agreement when it failed and refused to allow Machine Operator M. Shubert to report to his bulletin assignment (per Bulletin SYS-129A dated May 21, 2004) as machine operator on Cross System Production Crew 4 and instead held him on his former position at Columbus, Wisconsin (System File C-21-04-220-01/8-00405-010 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Shubert shall now be ‘. . . made whole for the time spent commuting; out-of-pocket mileage expenses; all lost overtime; the 1% rate of pay increase to which entitled under Memorandum No. 18; and compensation credit towards the lump sum payment equal to 5% of compensation earned during the calendar year on a Cross System Production Crew, but not exceeding \$1,000 in accordance with Memorandum No. 18*** Such remedy is being sought from June 1, 2004 and continuing until July 16, 2004 when claimant was released.’”**

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 Claimant exercised his seniority and accepted assignment to the Machine Operator position headquartered at Columbus, Wisconsin. He subsequently exercised seniority and accepted assignment on May 21, 2004 as a Machine Operator on a non-headquartered Cross System Production Crew. The Claimant was not released from his Machine Operator position at Columbus, Wisconsin, to report to his new assignment on the Cross System Production Crew until July 16, 2004.

The instant claim alleges that the Claimant incurred additional mileage when he was required to travel between his home and Columbus from June 1 through July 16, 2004, while working away from his non-headquartered position. The claim further alleges that the Claimant was denied premium pay and other compensation to which he would otherwise be entitled had he been permitted to report to the Cross System Production Crew in a timely manner.

The Carrier denied the claim and asserted throughout the handling of this dispute on the property that the Claimant was properly paid in accordance with the headquartered position and location worked at Columbus, Wisconsin. It further asserted that the Claimant was held on his former position until such time as his position could be filled. Moreover, the Carrier argues that there is no language in the Agreement which supports the instant claim.

The pertinent provisions of RULE 8 - BULLETINS – NEW POSITIONS OR VACANCIES read as follows:

“(e) An employee 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 the 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 employee 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 employee is released, he will then proceed to his new position without further delay.”

The burden was on the Organization to demonstrate that the Carrier violated the relevant language cited. See Third Division Award 31359. Careful consideration of the record in its entirety demonstrates that the Organization did not meet its burden. The note to Rule 8(e) clearly allows the Carrier to hold an employee on a position until such time as qualified relief is available. There is no penalty for doing so, nor does the Agreement specify a time frame in which the employee must be released.

The record shows that the Claimant was properly paid straight time and overtime on the position that he actually worked. While headquartered at Columbus, Wisconsin, and until he was released, the Claimant was not entitled to pay or mileage for commuting from his home to that location. Moreover, the Organization failed to identify a Rule or Agreement provision to support entitlement to compensation earned by the Cross System Production Crew prior to the time he reported and performed service at that location.

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In the absence of Agreement or Rule support, the claim must be denied.

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 19th day of November 2009.