

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40225
Docket No. MW-39421
09-3-NRAB-00003-060086
(06-3-86)**

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 the Agreement when it failed and refused to allow Assistant Foreman R. Moseman to report to his bulletin assignment (per Bulletin Award #SO-204A dated August 18, 2003) as assistant foreman to Section #727 at Latta, Indiana beginning August 18, 2003 and continuing through September 12, 2003 and instead held him on his former welder laborer’s position at Bensenville, Illinois (System File C-45-03-220-12/8-00320-022 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Moseman shall now be compensated ‘. . . for additional travel time spent commuting, additional out-of-pocket mileage, meals and lodging incurred and differential in pay between the Assistant Foreman’s rate of \$18.22 per hour to which he was entitled and Welder Laborer’s rate of \$16.99 per hour for the dates of August 18 through September 12, 2003, while the Carrier improperly withheld Claimant from reporting to his bulletin assignment as Assistant Foreman.”’**

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.

At the time of the events giving rise to this dispute, the Claimant worked as a Welder Laborer on Welding Crew No. 41B, headquartered at Bensenville, Illinois. On July 31, 2003, the Carrier issued Bulletin No. SO-204 for the position of Assistant Foreman on Crew No. 727, headquartered at Latta, Indiana, a distance of 15 miles from the Claimant's residence. The Claimant submitted a bid and was awarded the position by Bulletin No. 204A dated August 18, 2003. The Claimant was not released from his Welder Laborer position to report to his new assignment as Assistant Foreman until September 12, 2003.

The Organization contends that the Carrier's failure to properly and promptly release the Claimant to report to his bulletined position resulted in monetary damages, including the overtime pay and enhanced pay the Claimant would have received as an Assistant Foreman on Crew No. 727 at Latta, Indiana, where he would have been working had he not been held on the lower rated position of Welder Laborer. Moreover, the Organization asserts that the Claimant incurred additional time and expenses traveling to the Welder Laborer position headquartered Bensenville, Illinois, from his home 200 miles away. In the Organization's view, the Claimant is entitled to out-of pocket mileage as well as meal and lodging expenses, due to the Carrier's failure to release him to his headquartered assignment as Assistant Foreman on Crew No. 727 at Latta, Indiana.

The Carrier denied the claim and contended throughout the handling of the dispute on the property that the Claimant was properly paid in accordance with the headquartered position and location worked at Bensenville, Illinois. Moreover, the Carrier asserted that there is no language in the Agreement that supports the instant claim.

After careful consideration of the matter, we concur with the Carrier that no violation of the Agreement has been established.

Rule 8 - BULLETINS – NEW POSITIONS OR VACANCIES is the pertinent provision in this case and it reads, in relevant part, 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 language is clear. Rule 8(e) specifically contemplates that there will be situations in which the Carrier holds an employee on an assignment longer than ten days. When that occurs, “the ten (10) calendar day period will be extended sufficient to include the delay. . .” (Emphasis added). The Carrier is permitted to extend the ten day calendar period for reporting to a bid assignment and there is no penalty specified for doing so.

The record shows that the Carrier made reasonable efforts to fill the vacancy created when the Claimant was awarded the Assistant Foreman position headquartered at Latta, Indiana. Effective September 15, 2003, another employee was directed to temporarily fill the vacancy at Bensenville, Illinois, after the Carrier twice bulletined the Claimant's position and received no applicants. We find that, during the period from August 18 through September 12, 2003, the Claimant was properly paid in accordance with the headquartered position he worked in Bensenville, Illinois. The Organization has not identified any Rule or Agreement provision that would require the Carrier to pay wages or expenses on a position the Claimant had not yet assumed.

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 21st day of December 2009.