

Award No. 1177
Docket No. MW-1195

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

(LINES WEST OF MOBRIDGE)

STATEMENT OF CLAIM: "Claim of Albert W. Schaper, section laborer, Hettinger, North Dakota, for pay for 13½ days at section laborer's rate of pay on account of not being called to fill temporary vacancy of section laborer at Reeder from January 9th to 25th, inclusive, 1939."

JOINT STATEMENT OF FACTS: "The seniority of Section Laborer Albert W. Schaper is confined to the Roadmaster's District, Mobridge to Gascoyne inclusive.

"Prior to October 31, 1938, Laborer Schaper was regularly assigned as section laborer at Hettinger, North Dakota. On October 31, 1938, Mr. Schaper was laid off on account of reduction in force, and in accordance with current Maintenance of Way schedule Rule 1-(d)-1, reading:

'When force is reduced, track laborers affected may exercise seniority to obtain employment by displacing a laborer junior in service within the territory of one roadmaster.'

Laborer Schaper exercised his seniority by displacing a junior laborer at McLaughlin. Effective December 4, 1938, Laborer Schaper was displaced by a senior laborer, and following his return to Hettinger, where he maintains his home, Mr. Schaper wired the roadmaster as follows:

AFM—

'Hettinger, 2:10 P. M. Dec. 5, 1938.

Will you let me know if I can take John Link's place at Bucyrus as Section Laborer.

Albert Schaper.'

to which he received the following reply:

A. Schaper—Hettinger, N. D.

'Mobridge 12/5/38

I told you on No. 5 this A. M. that you could work in Link's place at Bucyrus while he was laying off. M-5

A. F. M.'

over a year after the correspondence was exchanged with respect to section foremen vacancies:

'Seattle, September 5, 1939

Mr. H. E. Arnold, Asst. to General Manager
C. M. St. P. & P. R. R.
Seattle, Washington

Dear Sir:

Referring to our telephone conversation today regarding the complaints made by bridgemen concerning new positions temporary in character:

Current Maintenance of Way Schedule Rule 2-(d) provides that vacancies or new positions in excess of 30 days will be disposed by bulletin **BUT THE RULE CONTAINS NO PROVISION AS TO HOW THE LESS THAN 30 DAY JOBS WILL BE FILLED.**

It is my suggestion that senior employes in point of seniority should be given the opportunity to such temporary vacancies or new positions. This method involves no expense to the Railroad Company and there should not be any objection.

For the purpose of arranging a memorandum supplementing that part of the rule in our schedule I will be glad to discuss it with you at the first opportunity.

Very truly yours,

(Signed) J. G. Jimopolis
Ass't General Chairman'

(Emphasis added.)

"Board Members will please note that the carrier is here confronted with a request to negotiate 'memorandum supplementing that part of the rule' which 'contains no provision as to how the less than 30 day jobs will be filled' during the time it is attempting to defend a time claim presented and prosecuted on the argument that the carrier is required by the rules to fill a vacancy of less than thirty days by the senior extra employe.

"The carrier maintains—

"(1) The practice followed in the filling of the temporary vacancy created at Reeder by the illness of Laborer Zell has been well established and uniformly followed since the agreement with the Maintenance of Way organization has been in effect.

"(2) This practice has been by acquiescence of proper representatives of the Maintenance of Way organization. In 1938 the practice was recognized by the General Chairman when he requested it be changed with respect to section foremen vacancies, and in 1939 the Assistant General Chairman requested the practice be changed with respect to 'bridgeman' vacancies.

"(3) Section Laborer Schaper recognized and followed the usual and accepted practice when he wired the roadmaster on December 5, 1938, as contained in the Joint Statement of Facts, and requested permission to fill a temporary vacancy occurring within the roadmaster's territory.

"(4) The claim of the employes is, in effect, that temporary section laborer vacancies and new positions of less than thirty days be bulletined, which is not required by any schedule rule or agreement."

OPINION OF BOARD: As recently held by this Division in Awards 1124 and 1150, the carrier is under no obligation to fill on the basis of seniority temporary vacancies not subject to the bulletining rule of the Agreement. The vacancy here involved was of this character, and no other rule of the

Agreement imposed an obligation upon the carrier to call the claimant. It is to be noted, however, that while the carrier, in this situation, has always deemed itself free to fill temporary vacancies with the most readily available furloughed employes, it has uniformly given preference to senior employes in connection with temporary vacancies when they have requested to fill such positions in the exercise of their seniority; and it has done so in this proceeding by permitting the claimant to displace the junior employe on the temporary vacancy when he made request for such displacement. Since there is no evidence of any departure from the rules of the Agreement, there is no valid basis for the claim as submitted.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of August, 1940.