

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23159
Docket Number MW-23109

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 to recall furloughed employee Oliver T. Thompson to fill a temporary vacancy as section laborer at McIntosh, South Dakota on January 11, 12 and 13, 1978 (System File C# 27/D-2161).

(2) Because of the aforesaid violation, Oliver T. Thompson shall be allowed twenty-four (24) hours of pay at the section laborer's straight-time rate."

OPINION OF BOARD: The Claimant had been furloughed prior to January 11, 1978. But, instead of recalling the Claimant to serve as Section Laborer at McIntosh, South Dakota, on January 11, 12 and 13, 1978, Carrier used a junior employee. The Claimant was assertedly available and had the required ability, which prompted an allegation that Rule 11 was violated.

Carrier contends that on the three mentioned days, a train was stuck in snow "thus creating an emergency situation" and, accordingly, the Carrier used the readily available junior employee.

The record shows varying contentions concerning residences of the employees, as well as availability to handle the "emergency".

Here, we have noted that emergency service may be performed without regard to seniority. There is some question that the Claimant was readily available on the 11th and, thus, Carrier's action on that date was appropriate. But, we find no basis for a conclusion that Carrier should not have attempted to obtain the Claimant's services thereafter. There was nothing about the particular situation which relieved it of that type of an effort.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated.

A W A R D

Claim sustained for January 12 and 13, 1978.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.

