

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24065
Docket Number MW-23953

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri Pacific Railroad Company
(Former C&EI)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mr. D. L. Perry to perform the duties of the assistant foreman, pending assignment under bulletin at Mt. Vernon, Illinois from May 31, 1979 through August 17, 1979 instead of assigning Mr. B. L. Watts to perform such duties (Carrier's File S 214-114).

(2) The Carrier further violated the Agreement when it failed to promptly bulletin the vacancy in said assistant foreman's position which existed from May 31, 1979 through August 17, 1979.

(3) As a consequence of the aforesaid violation, Mr. B. L. Watts be allowed the difference in what he received as a laborer and what he should have received at the assistant foreman's rate of pay for each day within the period mentioned within Parts (1) and (2) hereof."

OPINION OF BOARD: The critical event causing this dispute was the retirement of Assistant Track Foreman L. B. Drew. By letter dated May 11, 1979, Mr. Drew notified the Roadmaster that he was retiring effective May 31, 1979. The Organization received a copy of the letter on May 12th and the Roadmaster forwarded the letter to the District Engineer's office (where all Bulletins are issued) where it was received on May 29th. Subsequently, two actions were taken by Carrier: first, Assistant Foreman Perry was assigned to the temporary vacancy (pending Bulletining) on June 1, 1979; secondly, on July 17, 1979 the Bulletin for the permanent vacancy was issued. Claimant was assigned to the position (after passing an examination on operating rules) by Bulletin dated August 17th.

The applicable rules provide as follows:

"Rule 25 - New Positions and Vacancies-Bulletins

(a) New positions or vacancies other than that of laborer including temporary vacancies of more than thirty (30) days shall be bulletined.

(d) Temporary vacancies of less than thirty (30) days will not be bulletined. A temporary vacancy for foreman or assistant foreman for ten (10) days or less may be filled by using the senior capable employe on the gang. If it can be determined that such temporary vacancy will continue for more than ten (10) days and less than thirty (30) days, the senior employe on that seniority district, if competent, will be given preference in filling the temporary vacancy."

Petitioner argues that Carrier violated the Agreement, and specifically Rule 25(d) when it failed to assign Claimant to the temporary vacancy created, since he was the senior capable employe on the gang in question. There was no question about Claimant's ability to fill the position since he had done so in 1977 and 1978, according to the Organization. Furthermore, the Organization insists that the bulletining of the vacancy in July, some fifty two days following the notification, cannot be considered to be "prompt" as specified in the Rules.

Carrier maintains that the temporary assignment of Mr. Perry to the vacancy was appropriate since he already had seniority as an Assistant Foreman, which Claimant did not have, and his appointment was mandated by the clear language of Rule 25(d). Carrier points out that the Rule provides that temporary vacancies of Assistant Foreman, which are for more than 10 days but less than 30, will be filled by the senior employe in the seniority district who desires to fill the job. With respect to the bulletining of the position, Carrier states that the action was taken as soon as possible under extenuating circumstances. The clerk responsible for the bulletining was on vacation at the time the vacancy was known to the District Engineer's office and while on vacation she broke her arm. Upon her return to work the bulletin was promptly posted on July 17, 1979.

With respect to the temporary vacancy, the Board finds that Carrier's position is correct. It is apparent that Mr. Perry, who had seniority as an Assistant Foreman whereas Claimant did not, had the prerogative to fill the temporary vacancy. Claimant's position with regard to the temporary vacancy does not have Rule support and must be rejected.

The record indicates that Carrier did issue Bulletins on May 24, 1979 and June 21, 1979 but did not issue the Bulletin covering the vacancy involved herein until July 17th. There does not appear to be any reasonable explanation of why the instant vacancy was not Bulletined in June, in spite of the Clerk's misfortune. By any normal standard Carrier's actions in the bulletining process cannot be deemed to be "prompt". It is apparent that as a result of Carrier's failure to post the position at least in mid-June, Claimant lost one month's assignment (approximately) as an Assistant Foreman. It is concluded therefore, that as reparation, Claimant should be allowed the difference in pay for a thirty-day period.

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 Employees involved in this dispute are respectively Carrier and Employees 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 denied in part and sustained in part as indicated above; Claimant shall be made whole by being paid the difference in what he received as a laborer and what he should have received as an assistant foreman for a thirty (30) day period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.