

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24088
Docket Number MW-23414

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Chicago, Milwaukee, St. Paul & Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it permitted B. McDonough to displace M. R. McGrath on December 4, 1978 (System File C#11/D-2284).

(2) Mr. M. R. McGrath be allowed the difference between what he was paid as a laborer and what he should have been paid as a foreman because of the aforesaid violation beginning December 4, 1978 continuing until he is allowed to return to his former position."

OPINION OF BOARD: When Section Foreman McDonough was assigned to a temporary extra gang Foreman's position, the Claimant was assigned to the Foreman's position which was vacated by McDonough.

When the regular incumbent of the extra gang position returned to his regular position, Foreman McDonough was required (according to Claimant) to return to his prior position within a ten (10) day time limit. Although Rule 13 states that an employee assigned to a temporary service shall return to his former position within ten (10) days, McDonough was permitted by the Carrier to return on the fourteenth day. When McDonough returned to his former position the Claimant had to exercise his seniority to a lower rated position.

The Organization points out that Rule 13 is mandatory and it states that an individual shall return to his former position within ten (10) days and if he doesn't he suffers certain seniority restrictions.

The Carrier denied the claim because McDonough had merely been allowed to work the Foreman's position at Lake City; but he was not required to return to it within a ten (10) day period because he did not "own" that position by bulletin. Thus, the Carrier argues that Rule 8(c) is the pertinent rule and Rule 13 allows a returning employee to exercise seniority under that rule.

The Board is not persuaded that McDonough was not required to return to the position within the specified time period and under all of the circumstances of record we will sustain the claim.

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.

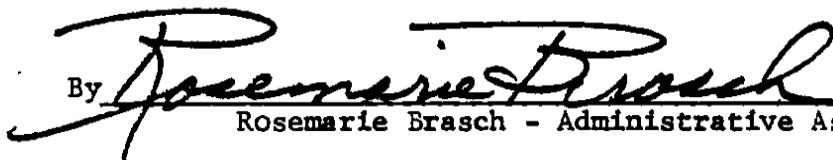
A W A R D

Claim sustained.

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 5th day of January 1983.

