

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26446
Docket Number MW-26267

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned junior B&B Mechanic K. Brown to fill a temporary vacancy as foreman-inspector at Huntington, West Virginia on October 6, 1983, instead of assigning and using B&B Mechanic I. Wiley, who was senior, available, willing and qualified to fill that vacancy (System File C-TC-1987/MG-4421).

(2) Because of the aforesaid violation, Mr. I. Wiley shall be allowed the difference between what he should have been paid at the foreman-inspector's rate and what he was paid at the B&B mechanic's rate for eight (8) hours."

OPINION OF BOARD: On October 6, 1983, the Carrier assigned a B&B Mechanic junior to the Claimant to replace for one day another employee serving as Foreman-Inspector overseeing the work of an outside contractor. The Organization contends that the Claimant should have been selected for the one-day assignment, based on his seniority and, according to the Organization, his availability and qualification. The Organization relies on Rule 2(b), which reads as follows:

"(b) Service Rights -- Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway Company as hereinafter provided."

The Organization properly notes that this Rule grants seniority preference in a variety of situations, including temporary vacancies.

However, Carrier points out that Claimant was assigned to an on-going project.

The record before us reveals that Carrier in the exercise of discretionary judgment concluded that Claimant could not be released for the one day vacancy and the Organization has failed in its burden to prove a violation of the Agreement.

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

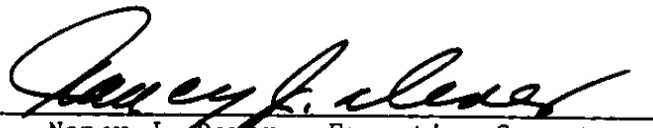
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.