

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier assigned and used a junior employe to fill a temporary vacancy as welder helper on Welding Gang 1911 from December 17 through 30, 1985, instead of assigning Sectionman F. L. Turner thereto (System File M-272/013-210-20).

(2) As a consequence of the aforesaid violation, Claimant F. L. Turner shall be compensated as follows:

'... he must be allowed the difference in wages between a Welder Helper (\$11.67 per hr.) and a Sectionman (\$11.41 per hr.) for thirty-two (32) hours to offset the loss of wages December 17 through 20, 1985. In addition, we are claiming that Mr. Turner must be allowed at the applicable Welder Helper's straight time rate thirty-two (32) hours' pay to offset the loss of work opportunity suffered December 23, 26, 27 and 30, 1985. Finally, had proper procedures been followed, Mr. Turner would have qualified for holiday pay on December 24, 25, 31, 1985 and January 1, 1986 at the applicable Welders Helper's rate. Therefore, provided Mr. Turner has already been allowed his holiday pay for those holidays at the Sectionman's rate, we are claiming he must be allowed the difference in wages between a Welder Helper and a Sectionman for thirty-two (32) hours to offset the inappropriate reduction in holiday pay. Provided, Mr. Turner has not been allowed any holiday compensation for those holidays we are claiming that arrangements must be made to allow him thirty-two (32) hours holiday pay at the Welder Helper's straight time rate. In any event, this claim is to allow Mr. Turner compensation equal to the amount he would have received absent the violation of the Agreement.'

In addition the claimant shall be compensated for all overtime service performed by Sectionman Trumbo on the claim dates herein at the welder helper's time and one-half overtime rate of pay."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute deals with the filling of a vacation vacancy. The record indicates that Claimant was not selected for the temporary promotion to welder helper, but that a junior employee was picked, even though Claimant was available. The Organization cited Rule 20 and in particular Note 4 of that Rule as applicable.

Some eleven months following the filing of this claim, at a conference with Carrier, the Organization amended its claim to also seek overtime payments for Claimant. Carrier offered to settle the claim, not including the overtime, for a lump sum of \$390.08, the exact amount claimed. This offer was rejected.

Rule 49 of the Agreement specifies that all claims must be presented within sixty days from the date of the occurrence upon which the claim is based. This Rule, and similar Rules with other Carriers, have been honored over a long period of time for good reason (see Third Division Awards 20457, 20279 and many others). It is improper to attempt to amend or expand a claim, as was attempted herein, some eleven months after the original claim was presented. The request for overtime compensation will be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.