

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29725
Docket No. MW-29438
93-3-90-3-365

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Carrier violated the Agreement when it assigned junior Roadway Equipment Operator R. S. Gomez instead of J. L. Sherman to operate the Jordan Spreader from Huntington, Oregon to LaGrande, Oregon from January 11 through 14, 1989 (System File S-154/890373).
- (2) As a consequence of the aforesaid violation, Mr. J. L. Sherman shall be allowed thirty-two (32) hours of pay at the applicable Class I Roadway Equipment Operator's time and one-half rate and the difference between the track machine operator's rate and the Class I Roadway Equipment Operator's rate for twenty-four (24) hours."

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 employe 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.

On January 11-14, 1989, the Carrier filled a temporary vacancy as a Roadway Equipment Operator to operate a Jordan Spreader to plow and remove snow from trackage from Huntington to La Grande,

Oregon, on the Oregon Division. The Claimant holds seniority as a Roadway Equipment Operator, although at the time of the temporary vacancy, he was assigned as a Track Machine Operator. The Oregon Division is his home division.

Instead of the Claimant, the Carrier filled the vacancy with an employee junior as a Roadway Equipment Operator. That employee was also working as a Track Machine Operator, regularly assigned to the Idaho Division.

Relevant here is Rule 20 (a), which reads as follows:

"New positions or vacancies that are to be filled (including temporary vacancies of less than thirty (30) calendar days' duration), shall be filled during the bulletining process and pending assignment in the following sequential order:

- (1) The senior employe of the group and class in the gang or at the location who is working in a lower class; or,
- (2) By advancing the senior available employe of the group and class actually working in a lower class in the nearest gang or at the nearest location within a distance of forty (40) rail miles from the gang or location where the vacancy occurs; or,
- (3) By examining and promoting an employe of a lower class cable of performing the work who is either working in the gang or at the location nearest where the vacancy occurs. Employes so utilized will not establish seniority as a result thereof."

The Carrier maintains that, just prior to the need to fill the temporary vacancy, the employee junior to the Claimant was working at Perry, Oregon, a location closer to the vacancy than where the Claimant was working. In this circumstance, the Carrier filled the vacancy as permitted under Rule 20 (a) (2).

The Organization questions why or indeed whether the selected employee was in fact working at Perry. Having raised the question, the Organization offers no proof to negate the Carrier's records as to the selected employee's work location. Absent such proof, there is no showing that the Carrier failed to comply with the applicable Rule.

With this finding, there is no need to examine the Carrier's argument that an "emergency" existed, thus allegedly giving it even greater latitude.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.