

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30400
Docket No. MW-30148
94-3-91-3-582

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul, and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when the Carrier failed to allow Trackman S. R. Sanchez to fill the trackman's vacancy at Clinton, Iowa commencing April 6, 1990 and instead assigned a junior trackman thereto (System File C #27-90/8-00008 CMP).
- (2) As a consequence of the aforesaid violation, Trackman S. R. Sanchez shall be allowed \$524.16 in mileage reimbursement and forty-five and one-half (45 1/2) hours' pay at the trackman's 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was regularly assigned as a Trackman and was working on a section gang at Kirkland, Illinois, at the time the instant dispute arose. His assignment required him to commute 152.6 miles to and from his home on a daily basis. On April 9, 1990, pursuant to Rule 8(c) of the Agreement, the Claimant attempted to exercise his seniority to fill a temporary vacancy as Section Laborer at Clinton, Iowa, located 40.6 miles from his home. The Carrier stated that the Claimant could not be released from his position at Kirkland, Illinois, because of extreme manpower shortages at the time.

Rule 8(c) of the Agreement reads as follows:

"8(c) New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, except that senior, available, qualified employees, on proper request to the Division Engineer, will be given preference, with the understanding they will not be paid for time lost nor for time consumed traveling to and from such position."

It is clear from the record that the Carrier violated Rule 8(c) when it refused to allow the Claimant to exercise his seniority for the temporary position at Clinton, Iowa. In determining the outcome of this dispute, we are guided by Third Division Award 29625, between the parties, where the Board held:

"The Board determines that the Carrier must accept responsibility for the chain of displacements. The Carrier retains direction of where its employees are assigned. This responsibility cannot be shifted to the employees.

The Carrier in particular questions the propriety of the portion of the Claim concerning travel expenses, pointing out that such travel expenses are not covered in the regular exercise of seniority. Except for the initial error, however, these employees would not have been subject to any time loss or expense. The Claim amounts are moderate and will be sustained."

We will accordingly sustain that portion of the Claim seeking reimbursement for travel expenses, but, since the Claimant suffered no loss of time, deny the remainder of the Claim.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.