

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30595
Docket No. MW-29885
94-3-91-3-262

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 allowed a junior employee instead of Mr. M.A. Kleinow to fill a laborer's position at Dubuque, Iowa on November 28, 29, 30 and December 1, 1989 (System File C #01-90/800-46-B-365 CMP).
- (2) As a consequence of the aforesaid violation, Mr. M.A. Kleinow shall be allowed thirty-two (32) hours of pay at the applicable track laborer's rate."

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 dispute involved herein.

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

At issue in this claim is the alleged failure of Carrier's Personnel Office to assist and assign a senior employee to a temporary position. Claimant insists that he sought to fill a position as a Section Laborer on a crew working in Dubuque, Iowa, commencing November 28, 1989. An employee junior to Claimant was assigned the position instead.

Claimant maintains that he telephoned the Personnel Office in Wood Dale, Illinois, on November 27, 1989, and asked that he be allowed to exercise his seniority. He claims that he was told that he would be contacted by the office at a later time. When he called on November 28, he was again informed that he would be contacted later. On December 1, he spoke with the office and was advised that he could report to work on December 4.

Carrier's version of events is outlined in its Submission to this Board as follows:

"...the information received from Carrier's Personnel Department indicated that Mr. Kleinow had called the Personnel Office and requested work on Monday, November 27, 1989. However, the positions requested by Mr. Kleinow were about to be abolished at the end of the week and he stated that he wanted to go to a position that would work longer than just a few days. He was informed that there would be a gang starting on Monday, December 4th at Dubuque which would work approximately twenty (20) days. Mr. Kleinow indicated he was interested in such position and that he would call back on Friday, December 1 to confirm that the gang would actually be starting on Monday, December 4. Mr. Kleinow returned the call and was placed on an 8(c) laborer's position effective December 4, 1989, at Dubuque. Mr. Nilsen also asserted that Personnel Office did not agree that Mr. Kleinow was to be provided a return call as he had suggested in the initial claim. Engineering Department did not agree that Mr. Kleinow had expressed an interest in performing service on a job occupied by junior employee E.K. Mohoney. Again, Personnel Office indicated that Mr. Kleinow had stated that he did not want to work just a few days and every effort was made by the Personnel Office to place him on a position that would afford the longest time period to work. The junior employee, Mr. Mohoney, was working a vacation relief position which ended on November 30, and then worked just one (1) additional day on December 1 as a helper at Dubuque."

It is clear from this review that there is a strong disagreement as to what took place. The written record of the case does not contain sufficient evidence to uphold Claimant's position or that of Carrier. The moving party in this dispute--the Organization--has the burden of breaking this deadlock by presenting factual evidence to support its version of events. It did not do so in this instance.

This Board traditionally dismisses claims where there is an irreconcilable difference in material facts. (See, for example, Third Division Awards 29418, 29376.) We must do so in this instance.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.