

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31456
Docket No. MW-31609
96-3-93-3-615

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

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

(1) The Carrier violated the Agreement when it failed to assign Mr. G.J. Feigitsch to the Underwood Section foreman's position on May 28, 1992 pending bulletin assignment in compliance with the provisions of Rule 14(b) (System File R686/8-00090).

(2) The Carrier violated the Agreement when it assigned junior employee Bruce Gilseth to relieve Track Inspector B. Enge on Crew 064E, working between Harvey and Portal, North Dakota, on June 2 through 27, 1992, instead of assigning Mr. O. Olson in recognition of his superior seniority and in compliance with the provisions of Rule 14(b) (System File R685/8-00091).

(3) As a consequence of the violation referred to in Part (1) above, Mr. G.J. Feigitsch shall be:

'...reimbursed for the equivalent of any and all lost wages at the pro rata rate beginning May 28, 1992, and continuing until this situation is corrected, and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.'

(4) As a consequence of the violation referred to in Part (2) above, Mr. O. Olson shall be:

'...reimbursed for the equivalent of any and all lost wages at the pro rata rate and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.'

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.

These cases were handled on the property as separate cases. The Organization combined the cases before this Board. While this Board will consider these cases, the Organization is forewarned that this might not be done in the future, particularly when the facts and circumstances are not the same.

In the first claim a Section Foreman bid on and was awarded the position of Tractor/Mower Operator. The Carrier held the Section Foreman on the former position while the position was bulletined. The Organization argues the Carrier should have permitted the Section Foreman to take the tractor/mower position and use the Claimant on the Section Foreman position. The Claimant was working as a Trackman and at the time of the claim had no Section Foreman seniority. Rule 10(h) reads as follows:

"(h) An Employee making application for and who is assigned to a bulletined position must take the position within twenty (20) calendar days from the date of assignment, unless he is prevented from doing so because of illness or other reasonable cause.

During the twenty (20) calendar day period referenced above, an employee assigned to a bulletined position who requests to be released from his former assignment to take such position may be held to perform temporary relief on his former assignment in the event no qualified relief is available. When qualified relief is available to protect the former assignment, the employee must be permitted to take the new assignment.

An employee who fails to take a position to which assigned by bulletin will forfeit all rights to such position and the position will be rebulletined. The employee will be considered furloughed, and will be required to file his name and address per Rule 13. (Amended 1/20/89) "

Rule 10(h) permits the Carrier to hold an employee on his former position except when qualified relief is available. The Claimant was not a Section Foreman; the Organization did not present any evidence that the Claimant had ever worked as a Section Foreman. The Carrier did not violate the Agreement when it did not assign the Claimant to the Section Foreman position.

In the second claim a short vacancy existed for a Track Inspector. An employee junior to the Claimant was used to fill the vacancy. Claimant was a qualified Track Inspector whose name was on the "Call List" to fill temporary vacancies as Track Inspector.

It appears from the record that the Carrier did not comply with Rule 14(b) in filling the Track Inspector vacancy. Accordingly the Board will award the Claimant the difference in earnings between the Track Inspector and the earnings the Claimant made as a Section Foreman for the period June 2 through June 27, 1992.

AWARD

Claim No. 1 denied.

Claim No. 2 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) in Claim No. 1 not be made.

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) in Claim No. 2 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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.