

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33340  
Docket No. MW-32218  
99-3-95-3-20**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Montana Rail Link, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Agreement was violated when the Carrier failed and refused to assign Mr. D. R. Fuhrman to fill the temporary vacancy in the foreman’s classification, pending bulletin assignment, at Dixon beginning March 14 through 24, 1993, instead of assigning said position in compliance with the provisions of Rule A-3 of the Craft Specific Provisions (System File MRL-109)**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant D. R. Fuhrman shall:**

**‘...receive the difference in pay between the Foreman rate of \$13.81 per hour and the Laborer rate of \$10.72 per hour, a total of \$3.09 per hour, for all straight time worked from march 14, 1994 through March 24, 1994, pay, at the Foreman overtime rate for all overtime worked by the fill in Foreman in the same period. We also request that the Claimant receive Mileage for each regular assigned day worked that the Carrier was in violation, for a daily total of 120 miles (the total round trip difference in mileage between the Claimants requested position and the location he required to protect). In addition to the mileage reimbursement, the Carrier shall reimburse the Claimant for travel time at the Foreman pay at the rate of 40 miles per hour.’”**

**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 were given due notice of hearing thereon.

Claimant, holding seniority as a laborer, placed a request pursuant to Rule A-3B to be placed into a foreman position. Subsequently, a foreman position became vacant and, instead of placing Claimant into the position, Carrier instead chose another employee pursuant to bulletin designating the position as a permanent position.

The instant matter places two rule provisions, Rule A-2(A)(3) and Rule A-3B, into play with respect to the manner in which the position in question was filled. Fortunately, the interplay of these two Rules has been interpreted by the Third Division in another matter. There, in Award 32713 which resolved a dispute between these same two parties, the Board held that because the two Rules created an ambiguity it was proper to look to the Carrier's past practice in the same circumstances. In so doing the conclusion was reached that the manner in which the Carrier filled the position in question was consistent with its past practice. Because the Carrier used that same process in the instant dispute, the same conclusion must be reached in this matter as well.

**AWARD**

**Claim denied.**

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**99-3-95-3-20**

**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 23rd day of June 1999.**