

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33482
Docket No. MW-32475
99-3-95-3-253**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union 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 bulletin the Group 3 Foremen’s position vacated by the incumbent when he was placed on medical leave commencing December 20, 1993 and thereafter assigned the duties of said position to be performed by others, instead of filling the position in compliance with the Agreement (System File N-74/940290).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant R. L. Kincade shall be compensated for the difference in wages he received as a Group 3 Carpenter and that of a Group 3 Foreman, beginning December 20, 1993 and continuing until the violation ceases.”**

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.

On December 20, 1993, the Group 3 Foreman for Gang 5555 began a medical leave of absence in excess of 30 days. Gang 5555 had consisted of a Group 3 Carpenter and the Group 3 Foreman. Carrier did not bulletin the Foreman vacancy. Instead, the Carpenter worked alone and was paid at the Foreman's rate. On February 1, 1994, the Carpenter's gang number was changed to 5556 and he reported to the Gang 5556 Foreman.

The Organization contends that Carrier violated Rule 20 because it failed to bulletin the Foreman vacancy. Carrier has raised several defenses. We need consider only one of them.

It is clear from the record developed on the property that on December 20, 1993, Claimant was not qualified as a Foreman. He did not pass his Foreman's exam until February 1, 1994. However, by that time, the Carpenter was a member of Gang 5556 and was reporting to the Gang 5556 Foreman. Therefore, it is clear that, under any circumstances, Claimant could not qualify for any relief.

AWARD

Claim denied.

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 22nd day of September 1999.