Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35496
Docket No. MW-33855
01-3-97-3-355

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to assign Mr. D. G. Thorpe to fill the temporary vacancy on the Glenwood Section on March 11 through April 3, 1996 in accordance with the provisions of Rule 14(b) (System File R1.079/8-00276).

(2) As a consequence of the aforesaid violation, Mr. D. G. Thorpe "... shall now be reimbursed for the equivalent of 146 (one hundred forty six) hours 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 were given due notice of hearing thereon.

At the relevant time, the Claimant was a furloughed Section Laborer who placed his name on the Zone 6 call list. This claim asserts that the Claimant was not called for an existing vacancy and that a junior employee was used instead of the Claimant in violation of the Claimant's seniority.

According to the Carrier, Personnel Specialist G. Hugo contends that he called the Claimant to fill a vacancy on the Glenwood Section from March 11, 1996 until April 3, 1996; no one answered the phone; no answering machine picked up the call; and Hugo then moved down the call list. The Claimant states that he called Hugo on March 8, 1996 and every week thereafter and was told there was no work for him; he does have an answering machine; and his wife is at home during the day.

Thus, the Organization contends that the Claimant was not called while the Carrier contends that the Claimant was called. At best, this record demonstrates disputed issues of material fact. Based on the record before us, the Board has no basis to resolve those facts in either party's favor. However, because the burden is ultimately on the Organization to demonstrate the facts to support the asserted violation of the Agreement, this claim must fail.

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 21st day of June, 2001.