

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35497
Docket No. MW-33828
01-3-97-3-317**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Agreement was violated when the Carrier called and assigned junior Section laborers W. Matejovic and/or R. Severson to fill a temporary vacancy at Kenmare, North Dakota on December 26, 27, 28 and 29, 1995 instead of calling and assigning senior Section Laborer T. A. Blumhagen thereto (System File R1.064/8-00264).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. T. A. Blumhagen shall be “. . . reimbursed for the equivalent of thirty two hours (4daysx8hrs) at the straight time rate and one hour (1) at the overtime rate, and have all 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 1 call list. This claim asserts that the Claimant was not called for an existing vacancy and that employees junior to him were used instead of the Claimant in violation of the Claimant's seniority.

The Claimant asserts that for the vacancy in dispute:

"... I was at home during the week of Dec 18, 1995 and available to be called for work both that week and the following week. While I did not sit by the phone waiting for a call each moment of that week I was generally within phone access during each day of that week, otherwise Shirley, Karissa, Dwane or Joey Blumhagen was available to take the messages for me..."

Senior Employee Administrative Officer G. F. Hugo states for the Carrier that:

"Our records show that there were no vacancies available at Kenmare the week of December 18, 1995, and the week of December 25 a vacancy was available, and although effort was made to contact senior employees from the call list, the only employee I was able to contact to fill the vacancy was William Matejovic."

In Third Division Award 35496 we held in a similar dispute between the parties:

"Thus, the Organization contends that Claimant was not called while the Carrier contends that Claimant was called. At best, this record demonstrates disputed issues of material fact. Based on the record before us, this 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."

That holding applies to this case as well. The Claimant's position is made particularly more difficult because of his statement that "I did not sit by the phone

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waiting for a call each moment of that week” and the lack of any showing of an alternative arrangement for receipt of calls.

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.