

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36270
Docket No. MW-35785
02-3-99-3-771

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 assigned junior employe E. A. Samson to a crane (speed swing) operator position beginning February 23 through 26, 1998, instead of Mr. B. A. Adams (System File R1.249/8-00219-024.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. A. Adams shall now be compensated the difference in pay between the speed swing operator’s rate of pay and the extra gang laborer’s rate of pay for forty (40) hours’ straight time and he shall be compensated at the speed swing operator’s time and one-half rate for any overtime the junior employe may have worked during the period beginning February 23 through 26, 1998.”**

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 March 2, 1998, the Organization filed the instant claim seeking payment for the difference in pay between the Speed Swing Operator rate of pay and the extra gang Laborer rate of pay for the week of February 23 through 26, 1998. The Organization contended that the Carrier improperly assigned junior employee E. A. Samson to fill the short vacancy position as a Speed Swing Operator instead of the Claimant.

The Organization argued that the Claimant had placed himself on the proper call list, and had prior experience on the machine in question. In addition, he was available to be called. By contrast, the Organization claimed, E. A. Samson had not placed himself on the appropriate call list, and therefore he was ineligible to be called for the position.

The Carrier responded by denying the claim on the ground that the Claimant was already assigned to a short vacancy position. The Carrier argued that the call list was not intended to allow employees already working a temporary assignment to transfer repeatedly to other temporary assignments. Thus, even if the Claimant was on the proper call list, and the Carrier disputes that contention, he would not have stood to be called. Moreover, the Carrier asserted in its last correspondence on the property that the parties' December 1, 1988 Letter of Agreement provides that call lists are to be used only when the short vacancy is in the same seniority group as that in which the employee was actively employed. The Carrier stated that such was not the case with respect to the Claimant.

We find no basis for the Carrier's assertion that the Claimant was working a short vacancy position or that such a position would preclude him from consideration for subsequent short term vacancies. By the same token, the Carrier's reliance upon the parties' December 1, 1988 Letter of Agreement is not well-founded. The language therein states:

"Employees in active service will be allowed to place themselves on 'Call Lists' and stand for Short Vacancies in the Seniority Group in which actively employed provided that they will only be entitled to be called to Short Vacancies in ranks higher than that in which they are actively employed."

Under the foregoing provisions, the Claimant could not place himself on a call list in his seniority group in ranks lower than that in which he was actively employed, but there is no express language preventing the Claimant from placing himself on call lists in other seniority groups. The Carrier's contention that the Claimant was not entitled to be called to a position in a different subdepartment is unsupported by a fair reading of the cited language and therefore must be rejected.

There is sufficient evidence to conclude that the Carrier did not comply with Rule 14(b) in filling the Speed Swing Operator short vacancy. The claim, therefore, will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) 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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 28th day of October 2002.