

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36978
Docket No. MW-37441
04-3-02-3-496**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific 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 employee S. Whedon to a short term vacancy as an operator on the material truck at Sturtevant, Wisconsin beginning on January 23, 2001 and continuing through March 2, 2001 instead of Mr. F. D. Goytowski (System File C-06-01-C060-05/8-00219-080 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. D. Goytowski shall now be compensated ‘... for a total of two hundred thirty (230) hours at the applicable straight time rate of pay and thirteen (13) hours at the applicable time and one-half rate of pay for all time, benefits and lost work opportunities as a result of the Carrier utilizing junior employee Steve Whedon....’”**

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.

According to the record, the Claimant was furloughed on December 21, 2000. He immediately undertook efforts to secure available work either through temporary vacancies and/or bulletined positions. He contended that he filed a written request for temporary vacancies per Rule 8(c). He also made a verbal request for same in conversation with the Carrier's Staffing Services Representative. A statement from the representative confirms the verbal discussion he had with the Claimant.

Despite the Claimant's efforts, a Truck Operator vacancy was offered to a junior employee. That junior employee began work on January 23, 2001 and continued until early March. The junior employee's statement verifies that he worked 230 straight time and 13 overtime hours.

The foregoing Truck Operator vacancy was bulletined on February 15, 2001 as a permanent position. Although the Claimant bid on a number of other bulletined positions, he did not bid on the Truck Operator position. The successful bidder did not begin work until March 6, 2001. Thus, the junior employee remained working in the temporary vacancy through March 2, 2001. Because the position did not actually begin work until March 6, the Claimant's failure to bid on this position does not reduce his claim for work performed up to that date.

The Claimant did successfully bid on the bulletined position of Foreman of a brush cutting gang. The bulletin award date was February 21, 2001, but the position did not actually begin working until March 6, 2001.

The Carrier maintained that the Claimant did not properly file a written request for Rule 8(c) temporary vacancies. However, the Organization's evidence included two prior Carrier letters that verified the existence of a long-standing practice of honoring verbal requests due to the impracticalities of insisting upon

written requests. The record does not show that the Carrier attempted to modify this practice by a permissible means or that it ever provided any notice whatsoever of its intent to discontinue accepting verbal requests.

Given the state of the record, we find that the Claimant did request the Truck Operator vacancy in question by a permissible means but the Carrier failed to honor his request. The claim, therefore, has merit.

On the question of remedy, we note that the Claimant was paid for safety training for two days during the claim period. The junior employee did not perform overtime work on either of these days. Thus, the Claimant was only unavailable for 16 hours of straight time compensation, which must be subtracted from the overall claim. The Claimant's entitlement to the remainder of the claim has been properly established by the record. The Carrier, therefore, is directed to provide the Claimant with additional compensation equal to 216 straight time and 13 overtime hours at the applicable rates then in effect for him.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of April 2004.