

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37154
Docket No. MW-36705
04-3-01-3-256

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Missabe and Iron Range Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Machine Operator T. Miller to fill the crane operator position on the Keenan Section beginning November 23 through December 7, 1999 and instead assigned junior employees K. Gunderson and/or T. Lucious (Claim No. 66-99).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Miller shall now be compensated for eighty-eight (88) hours' pay at the Group A-1 Crane Operator's straight time rate of pay and twenty-one (21) hours' pay at the applicable time and one-half rate of pay.”

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 all material times herein there was no employee holding the position of Relief Crane Operator on the Carrier's Keenan section. Thus, when the regular Crane Operator went on vacation and the Carrier assigned two Relief Laborers who were junior to the Claimant, he filed the instant claim.

The record reflects that subsequent to the events giving rise to the instant dispute the Claimant was removed from service and that the Board upheld his dismissal when contested. Thus, we find, consistent with other authority under the Railway Labor Act (e.g., Award 287 of Public Law Board No. 164 and Third Division Award 23218) that under the circumstances it makes little sense to spend valuable Board time and resources on this claim.

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 25th day of August 2004.