

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38247
Docket No. MW-37552
07-3-02-3-657

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(**BNSF Railway Company (former Burlington Northern**
(**Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Truck Driver G. Schlieve to fill a truck driver vacancy at Malta, Montana on January 25, 26 and February 2, 2001 and instead assigned Mr. P. Siewig (System File B-M-847-L/11-01-0121 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Schlieve shall now ' . . . receive eight (8) straight time hours for each of the days: January 25 and 26, 2001 and (4) four straight time hours for February 2, 2001."**

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 time this dispute arose, the Claimant had established seniority in the Track Sub-Department, Maintenance of Way and Structures Department as a Truck Driver on the Montana Division. He was regularly assigned and working as a Track Inspector with headquarters at Malta, Montana. The Claimant had also filed a written request – in accordance with Rule 19(A) – with the Carrier's Manpower Office to fill any Truck Driver vacancy on Seniority District 20, Montana Division. Rule 19 - TEMPORARY VACANCIES AND VACATION RELIEF NOT BULLETINED reads, in pertinent part, as follows:

"A. A new position or vacancy of thirty (30) calendar days or less duration, shall be considered temporary and may be filled without bulletining. If such vacancy or position of foreman or assistant foreman in the Track or B&B Sub-department is to be filled, the 'eligible list' referred to in Rule 18 will be used. If such vacancy is on any other position and is filled, preference will be given to the senior qualified employee who is not assigned in the rank in which the vacancy occurs and who has on file written request to fill such vacancy. Such employee will assume all the working conditions of the assignment just as if regularly assigned thereto."

On January 25, 26 and February 2, 2001, the Malta Section Truck Driver position became vacant. The Carrier instructed Malta Section Foreman P. Siewig to fill the vacancy in addition to his regular Foreman duties.

The above claim was filed on February 10, 2001. The Carrier denied the claim by letter of March 19, 2001. The denial was appealed, and the claim subsequently progressed according to the Agreement.

In its initial letter of denial, the Carrier contended that it chose not to fill the vacant position, and thus was not obliged to offer the Claimant the three one-day vacancies on the Truck Driver position. However, a signed letter from then Foreman Siewig indicates that he did, in fact, drive the Malta Section truck on the dates in question. The Carrier has not disputed or disproved Siewig's written statement.

The language of Rule 19(A) is clear. It is undisputed that the Claimant had the proper request on file to fill the type of vacancy at issue. He also had the appropriate seniority to operate the truck in question. Under the provisions of Rule 19(A) therefore, the Claimant should have been awarded the temporary vacancy in lieu of the Foreman. Based upon the foregoing, the Board finds that the instant claim should be sustained as presented.

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 18th day of July 2007.