

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38966
Docket No. MW-37282
08-3-NRAB-00003-020292
(02-3-292)

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 Employees
(Soo Line 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 Machine Operator K. G. Drabus to a short vacancy position (helper on the snow fighter machine) working on the Elbow Lake Subdivision between Enderlin, North Dakota and Glenwood, Minnesota on December 20, 21, and 22, 2000 and instead assigned junior employee T. J. McConnell (System File R1.640/8-00219-067).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. G. Drabus shall now be compensated for ‘. . . thirty (30) hours at the helper rate of pay and have all overtime, 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.

In reviewing this matter, we confined our analysis to only the evidence and argument that was advanced during the handling of the claim by the parties on the property. According to that record, the Claimant was the senior furloughed employee to be called for the assignment in question. The Organization and the Claimant contend he was available but was not called. Per the Claimant's statement, he was home and had caller ID but no calls from the Carrier were registered on the claim dates. The Claimant submitted a statement to that effect.

The Carrier, to the contrary, maintains that the Claimant was called twice but there was no answer. Moreover, it asserted that the calls for the assignment would have been made in advance of the date of the vacancy. The Carrier provided a statement from the employee who made the two attempts to call the Claimant.

We note that the Claimant's statement does not provide any availability or caller ID information for the days in advance of the claim dates. The Carrier official who placed the calls to the Claimant's number also observed that the Claimant did not return any phone calls to the Carrier based on the caller ID information that should have been registered on his phone equipment.

Given the foregoing state of the record, we find that a violation of the Agreement has not been proven.

AWARD

Claim denied.

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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 29th day of February 2008.