

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41680
Docket No. MW-40937
13-3-NRAB-00003-090221**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
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 failed to call and assign Mr. K. Christensen to a vacancy on the burro crane operator position on Production Crew No. 3 beginning March 13, 2006 and continuing and instead utilized Mr. D. Krumwiede to fill such vacancy (System File C-06-160-023/8-00430-13).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Christensen shall now be compensated ‘. . . for the difference in pay between that which claimant Christensen earned and that of Burrow Crane Operator at the hourly rate of \$19.75 to which he was entitled from March 20, 2006 through May 21, 2006***’”**

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.

Several procedural objections were raised such as the Carrier asserting the claim was untimely filed so as to bar the Board from taking jurisdiction of the case. However, the record evidence reflects that the Carrier failed to raise the timeliness issue at the outset of the filing of the claim and proceeded to deny the claim and continued in participating in the handling of the claim up until the claim was progressed to the Board. On this fact circumstance the Board holds that, in effect, the Carrier waived its right to assert the instant claim was untimely filed. As to other procedural issues raised, we find the record evidence to be so muddled on both sides so as to preclude any definitive findings thereon and, as a result, the Board shall now consider the merits.

The Organization claims a short vacancy on the Burrow Crane Operator position arose due to the fact that the incumbent Burrow Crane Operator, D. Krumwiede, was assigned by the Carrier pursuant to System Bulletin 30A dated March 9, 2006 to fill a temporary position as Speed Swing Operator, System Production Crew 3. The Organization asserts that at the time said Burrow Crane Operator short vacancy arose, Claimant K. Christensen was on furloughed status and was on the proper call list with seniority standing and was qualified to be called to fill the short vacancy position in accordance with the applicable provisions of Rule 14(b). The Organization further asserts said provisions of Rule 14(b) make it mandatory for the Carrier to fill such short vacancy at the time it arises.

According to the Carrier, incumbent Operator Krumwiede did not request to be released from his Burrow Crane Operator position electing instead to wait a period of 20 days to assume his awarded temporary position as a Speed Swing Operator. In any event, however, due to the fact that incumbent Operator Krumwiede opted to

remain in his Burrow Crane Operator position for the time period covered by the instant claim, the Carrier argues that no short term vacancy existed to be filled.

Absent proof presented by the Organization to refute the Carrier's position that no such short vacancy existed to be filled, and noting that it was incumbent upon the Organization to bear the burden of proof in order to prevail in its claim, which we find the Organization failed to do, the Board has no choice but to deny the 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 18th day of June 2013.