

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41681
Docket No. MW-40974
13-3-NRAB-00003-090269**

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

**(Brotherhood of Maintenance of Way 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. N. Higgins to fill the assistant foreman vacancy on the Buffalo Section Crew beginning December 18, 2006 and continuing through January 1, 2007 and instead assigned Mr. E. R. Konsor (System File C-07-160-002/8-00460-014).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. Higgins shall now ‘. . . be reimbursed for equivalent of eight (8) hours for each of ten (10) work days and four (4) holidays, a total of 112 hours, at Assistant Section Foreman rate of pay of \$18.17 per hour for a total of \$2035.04 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.

A chain of events giving rise to the instant claim was set in motion on December 18, 2006, when a Track Inspector on the Buffalo Section commenced his vacation and the Carrier directed regularly assigned Buffalo Section Foreman D. Lorendo to fill in for the absence of the Track Inspector. As a result, the Carrier then directed Buffalo Assistant Foreman L. Chalich to fill in for the Foreman's position and, in turn, E. R. Konsor a regularly assigned Section Laborer on the Paynesville Maintenance Crew was directed to fill in on the Assistant Foreman's position. By making such assignments, triggered by the vacation absence of the Track Inspector, the Carrier was able to cover the duties of each of the above positions without having to increase its forces by utilizing the Assistant Foreman's call list for relief in filling that position.

On February 13, 2007, the Organization filed the subject claim alleging that the Carrier violated Rule 14 – the Increasing Forces clause of the December 31, 2001 Schedule Agreement. In particular, the Organization cited as applicable, the following provisions of Rule 14 (b):

“In crews with one or more regularly assigned assistant foreman, the senior regular assistant foreman in the crew where the vacancy occurs who is willing to relieve the foreman will be given preference for the position in the event there are no employees with a seniority date on the foremen's seniority roster available on the applicable ‘call list.’

If the short vacancy left in the assistant foreman's position by this relief procedure is to be filled, it will be filled from the applicable assistant foremen's ‘call list’ in accordance with Schedule Rule 14(b).”

The Organization asserts that the Carrier improperly assigned E. R. Konsor to fill the Assistant Foreman position citing, as the reason, that Konsor was not on the appropriate Zone 6 Call List, but the Claimant was on said appropriate Call List.

The Board notes it is now well established by numerous previous Board decisions that the absence of an employee from work due to taking a vacation does not constitute a "vacancy or short vacancy" under any of the provisions of Rule 14. The Carrier can avail itself to fill a position, in this case, the Assistant Foreman position resulting from the absence of an employee due to vacation by utilizing the appropriate "call list" in accordance with the applicable cited provisions of Rule 14(b) but doing so is an option on the part of the Carrier and not a contractual obligation. Had the Carrier in this instant circumstance opted to fill the Assistant Foreman position by utilizing the appropriate "call list," pursuant to the applicable provisions of Rule 14(b) the Board would have deemed the subject claim worthy of consideration on its merits. Because we find Rule 14(b) inapplicable to the extant circumstances cited by the Organization and, therefore, concomitantly find no violation of Rule 14(b), the Board is compelled to deny the subject claim in its entirety.

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.