

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41738
Docket No. MW-41545
13-3-NRAB-00003-110151

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

**(Brotherhood of Maintenance of Way Employees 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 Carrier violated the Agreement when it improperly issued the May 7, 2007 System Bulletin No. 207 for the position of a temporary Group 2 Rank A Section Foreman position headquartered at Noyes, Minnesota with the restriction / statement that ‘SUCCESSFUL APPLICANT MUST BE AVAILABLE TO RESPOND WITHIN 30 MINUTES TO PRE-RAIL CARS FOR CUSTOMS INSPECTIONS ***’ (System File G-07-040-027/8-00430-022).**
- (2) The Carrier violated the Agreement when it failed to assign Mr. R. Dalbey to the foreman position on the section crew headquartered at Noyes, Minnesota, by System Bulletin 207A, dated May 23, 2007 and instead assigned junior employe R. Degelder (System File G-07-040-029/8-00430-021).**
- (3) As a consequence of the violation referred to in Part (1) above, the ‘. . . Organization requests that Bulletin 207 be canceled and that this position be re-bulletined absent the restriction.’**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant Ron Dalbey shall now be compensated for ‘. . . the difference between the straight time and overtime to which he was entitled as temporary Section Foreman at Noyes and that which he**

earned as a Group 2 Rank C Machine Operator from May 23 through October 3, 2007.”

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.

Because the two claims set forth above in Parts (1) and (2) are identical in substance to the claims the Board already addressed in Third Division Awards 41737 and 41739 we deem the discussion and findings made in those two cases to constitute the discussion and findings applicable to the instant case.

Briefly, we reiterate that while the Carrier possesses the right to promulgate “reasonable” Rules without an obligation to confer with the Organization prior to implementing such Rules, we also note that the operative word when unilaterally promulgating such Rules is “reasonable.” In the prior two cases cited and referenced above, we found under all the prevailing circumstances, adding the requirement to any of the bulletined Noyes section crew positions the successful applicant must be available to respond within 30 minutes to pre-rail cars (aka, the “barman” duty of either section crew positions of Foreman or Assistant Foreman) for Customs Inspections was not “reasonable.” We therefore found in the prior two cases, and we reassert that finding here, that by awarding and or assigning the position of Assistant Foreman and subsequently the position of Foreman to R. Degelder, who has far less seniority standing and far less experience than the Claimant, the Carrier violated the Claimant’s contractual seniority rights in rejecting his bid for both positions based on the rationale of his inability to satisfy the 30-minute response time requirement due to the fact that he resided in Emerald, North Dakota, located a distance of approximately 96 miles from Noyes, Minnesota.

In finding the 30-minute response time requirement to have been an unreasonable requirement for the Noyes section crew positions of Assistant Foreman and Foreman, we concur in the remedy requested by the Organization and order that Bulletin 207 be canceled and that the Foreman position be re-bulletined sans the 30-minute response time requirement. As in the prior two referenced Awards above, we order that the Claimant be properly compensated for any difference in straight time and overtime pay for the period in question (here, specifically, May 23 through October 3, 2007) he was entitled to receive as a result of not being awarded/assigned the Foreman's position. With respect to this award of compensation and the compensatory awards specified in the prior two Awards referenced above, we are cognizant of the Carrier's argument that there should be no pyramiding of the compensation due the Claimant as a result of these three Awards. As in the prior two Awards, we remand to the Parties, the task of calculating the proper payment commensurate with the loss of wages and other monetary benefits suffered by the Claimant as a result of not being awarded the various bulletined positions of Assistant Foreman and Foreman dating back in time to the very first bulletined position of Assistant Foreman that included, for the very first time, the 30-minute response time requirement. It is understood that if the Parties fail to agree as to the amount of compensation due the Claimant, either Party may request the Board for an Interpretation to settle the matter with finality.

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 30th day of September 2013.