

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42424
Docket No. MW-41908
16-3-NRAB-00003-120195**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to assign Mr. C Driscoll to the Class 2 Foreman position on Gang 3393 headquartered at Mankato, Minnesota, as advertised on Bulletin No. D7S50208, effective November 5, 2010 (System File B-1016C-104/1546029 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘... the assignment to the Foreman Class 2 position advertised in Bulletin D7S50208 must be corrected to award that position to Claimant C. Driscoll. Claimant must be compensated for the differential in pay from his Assistant Foreman position to the pay which he would have realized had he been properly assigned to the Class 2 Foreman position. Claimant must also have his record corrected to reflect his acquiring Foreman seniority as of November 5, 2010.’”**

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.

This dispute between the Parties pertains to which section of Rule 16 – Bulletining New Positions and Vacancies was the applicable section governing Carrier’s assignment to the bulletined position to the one claim date in question.

The Organization asserts the proper section of Rule 16 that Carrier should have used was Rule 16(j) whereas, Carrier applied Rule 16(i) in assigning the position to an employee other than Claimant.

The facts before the Board as we construe them, warrants awarding the Claimant the compensation requested by the claim.

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 31st day of October 2016.