

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43272
Docket No. SG-43206
18-3-NRAB-00003-150406**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly SOO Line):

Claim on behalf of B. Brandt, for compensation at his overtime rate for all lost work opportunities he suffered as a result of Carrier assigning A. Phernetton, a junior employee, to System Steel Gang P3, beginning on February 24, 2014, and continuing until this dispute is resolved, or, until Carrier bulletins this position and awards it to the senior bidder, account Carrier violated the current Signalmen’s Agreement, particularly **RULE 7 – BULLETINING NEW POSITIONS OR VACANCIES, when it unilaterally assigned A. Phernetton to this work without bulletining the position in accordance with said rule. Carrier’s File No. SC-003-07-16-14. General Chairman’s File No. Brandt 7A. BRS File Case No. 15156-SOO.”**

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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to advertise a temporary position with System Steel Gang P3 that exceeded thirty days and instead assigned an employee to that position who is junior to the Claimant, thereby depriving the Claimant of overtime opportunities. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the evidentiary record shows that the Carrier effectively created a temporary new position under Rule 7(a), because the position in question should have been advertised, because the Carrier improperly assigned a junior employee to work in that position, because the Claimant should have been awarded this position, and because there is no support for the Carrier's position. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to show that the Carrier's actions violated the Agreement, because the Claimant was fully employed during the time of the claim, because there is no proof that the Claimant suffered any losses, and because the assignment at issue was not a new assignment, and because the Organization has failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it assigned a junior employee to work with System Steel Gang P3 instead of bulletining the position so that more-senior employees could bid on it. The record reveals that the Carrier did not create a new position, nor was there a vacancy that was eligible for a bulletin. There is no language in Rule 7 that required the Carrier to bulletin the position.

It is fundamental that the Organization bears the burden of proof in cases of this kind. Since the Organization has failed to meet that burden, the Board has no choice other than to deny the claim.

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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 26th day of June 2018.