

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43975
Docket No. MW-45329
20-3-NRAB-00003-190166**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Northern Indiana Commuter Transportation District

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employee M. Wozniak to fill a temporary position operating a Group 2 pay loader on April 24, 5, 25, 27, 28, May 1 and May 2, 2017, instead of assigning senior employee J. Kaminski thereto. (System File C-06-17-060-05-N NIC)**
- (II) As a consequence of the violation referred to in Part (1) above, Claimant J. Kaminski shall now “...be allowed to use his seniority as required by the Agreement and he be paid a \$100 per day penalty for a total of \$700 for a settlement of this claim.”**

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 a claim for a payment to the Claimant when he was not allowed to exercise seniority to a Group 2 temporary machine operator position. The Organization continues that Rule 29(c) is irrelevant to the instant inquiry because it governs filling temporary vacancies and the obligations of the employee filling the temporary position.

The Carrier does not deny that the Claimant did not fill the position and that a junior employee was placed in the position and worked as a Group 2 machine operator for the period in question. The Carrier asserts Rule authority for refusing to place the Claimant into the position. According to the Carrier, although senior to Mr. Wozniak, the Claimant was obligated to a permanent assignment. Further, there was no available replacement for the Claimant on his regular foreman assignment. Of the six available foreman, one was on vacation, one working a tamper position, and another working a temporary assistant foreman on the Hi-Rail inspection truck.

This Board has reviewed the evidence. Rule 29(c)(2) provides:

“The employee must stay in the temporary assignment until the earliest of: (i) the return of the incumbent to the temporarily filled assignment; (ii) the abolishment or blanking of the temporary assignment; or (iii) the employee’s obligation to move to another permanent assignment.”

The record on the property indicates that the Claimant holds seniority as a Group 1 Machine Operator and a Foreman. He exercised his seniority to fill a temporary Group 2 Machine Operator position. The Carrier immediately restored the Claimant to his Foreman position. There were no other qualified foremen to fill the assignment he was vacating. The Carrier cited Rule 29(c) as authority.

Although the Organization claims that Rule 29(c) controls the obligation of the employee filling a temporary vacancy, that position is not supported by the record and the arguments. The Organization’s position would allow an employee to bid out of a bulletined foreman position and leave that position with no qualified employees to fill the foreman position. The language of the Rule does not support this conclusion. Claim denied.

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 day of 2020.