

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45005  
Docket No. MW-43090  
Old NRAB-00003-150281  
23-3-NRAB-00003-220932**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Agreement was violated when the Carrier failed to offer and assign Senior Foreman J. Ruppert to fill a temporary foreman vacancy at Mile Post 127.25 on the Geneva Subdivision on January 13, 2014 through January 18, 2014 and instead assigned junior Foreman B. Cain thereto (System File B1416C0101/1601490 CNW).**

**(2) As a consequence of the violation referred to in Parts (1) above, Claimant J. Ruppert shall ‘\*\*\* be made whole for all loss, such as, all/man hours worked by the junior employee.’”**

**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.**

**Factual Background:**

Claimant was assigned to Gang 4092, working on a bridge project in the Clinton Subdivision at MP 156.28. Gangs 4091 and 4092 were both assigned to the same bridge project. Foreman B. Cain was assigned to Gang 4091. A second project arose on the Geneva Subdivision at MP 127.92; Cain was sent to work there. Claimant requested to fill the temporary vacancy but was not allowed to fill position. Claimant has established superior seniority as a foreman over Cain. Claimant remained assigned to the Clinton project and grieved. The matter was processed through the grievance procedure to review by this Board

**Position of Organization:**

The Organization argues that Claimant was denied the opportunity to perform duties that were assigned to a junior employee. During the handling on the property, the Organization presented a written statement from Claimant asserting he provided his supervisor with a written request to fill the vacancy, which was denied.

The Organization contends Rule 16B controls situations such as this one. This provision provides as follows: "B. Vacancies of less than thirty (30) calendar days duration may be filled without bulletining by the senior qualified employees in the district and group making request in writing, consistent with operational requirements." It references an unnumbered award from Arbitrator Suntrop, stating: "... arbitral precedent which states that the function of the 'rights' arbitrator under Section 3 of the RLA is to ' ... interpret labor agreements ... ' as they are 'written.' Arbitrators in this industry have always held that the ' ... terms of (a) written agreement must prevail .... ' Arbitration Awards issued in this industry tell us that we must ' ... give common or normal meaning to the language used in (an) agreement. .. ' and that ' ... however onerous the terms of an agreement may be, they must be enforced if such is the meaning of the language used ... '. In the Organization's assessment, this provision must prevail.

**Position of Carrier:**

The Carrier points out that no vacancy ever existed as alleged. Rather, the work was a planned project and Foreman Cain of Gang 4091 was assigned the associated duties. In its view, Rule 16B addressed the assignment of new positions or vacancies. It argues there was no evidence of any vacancy. The Carrier had two work

groups and two projects. It assigned each work group a project based upon the experience of the employees.

Even if there was a temporary vacancy, the documents provided by the Organization show no request was made until day 5 or 6 of the project. Thus, the request would have been untimely.

Analysis:

We do not find the evidence to support a finding of vacancy as alleged. Nor are we persuaded that the request to be assigned to the contested work was made in a timely fashion. The evidence does not support a finding that Claimant was the employee the Carrier should have assigned. The Organization has failed to meet its burden of proving that a contract violation has taken place.

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 28<sup>th</sup> day of June 2023.