

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 2

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to call and assign Mr. K. Christensen to a vacancy on the Group 1, Rank B (operator of the Excavator) position on the Distribution and Pickup Crew (SOODIST2/3646) beginning November 19, 2007 and continuing through November 29, 2007 and instead utilized Mr. S. Larsen to fill such vacancy (System File C-07-160-049/8-00460-020).
2. As a consequence of the violation referred to in Part (1) above, Claimant K. Christensen shall now be compensated:
 1. Ten (10) hours each day for a total of seven (7) work days, or seventy (70) hours, at the Group 1, Rank B Operator’s rate of pay of \$19.52 per hour for a total of \$1,366.40; AND
 2. The differential in pay for sixteen (16) hours holiday pay for Thanksgiving and the Friday after Thanksgiving, November 22 and 23, 2007 between the rate that he was paid for such holidays and the Group 1, Rank B Operator’s rate of pay of \$19.25 to which he was entitled; AND
 3. All overtime, vacation, fringe benefits, and other rights which were lost to him as a result of the above violation.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it failed to assign the Claimant to a position operating the Excavator in November 2007, while the regular operator was on vacation. The claim alleges that the Carrier instead improperly assigned another

employee to fill this short-term vacancy. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated Rule 14(a) of the Agreement when it failed to call the Claimant to fill the short-term vacancy at issue despite the fact that the Claimant properly was listed on the call list for all classifications of the Sub-Department, and because there is no merit to any of the Carrier's defenses. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because Rule 14 does not state that vacation vacancies must be filled from the call list, because the Vacation Agreement allows for the designation of an employee to fill a vacation vacancy without penalty, because the position of a vacationing employee is not a vacancy under the Agreement, because the Claimant was not entitled to be called to fill the vacancy in question because he was not actively employed in that seniority group, and because the requested remedy is not supported by the Agreement.

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

This Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it failed to call the Claimant for a vacancy that resulted from an employee going on vacation and, instead, called in a junior employee. Rule 14(b) states that:

Call lists to protect short vacancies will be established
within each sub-department of the Maintenance of Way
Department . . .

It goes on to state that:

Qualified employees on a call list who have indicated they wish to protect work in a particular group and rank in which the vacancy occurs will be called in seniority order . . .

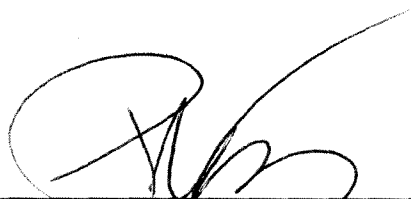
A regularly assigned employee took a vacation from November 19 through 29, 2007. The Claimant was the senior employee and was on furlough as of November 15, 2007. The Claimant had properly placed himself on the call list. Despite the above, the Carrier failed to properly fill that short vacancy from the call list. The Claimant was improperly denied the work opportunity.

This Board has ruled on this issue on numerous occasions in the past, including Third Division Awards 39558 and 29113.

For all the above reasons, the claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12