

PUBLIC LAW BOARD NO. 2960

AWARD NO. 87
CASE NO. 118

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior Foreman T. Sturz to fill a foreman position pending bulletin assignment at Augusta, Wisconsin on January 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, 1983 instead of assigning and using Foreman W. E. Neville who was senior, available, qualified and had requested to fill that vacancy. (Organization File 7T-3669; Carrier File 81-83-95).
- (2) Claimant W. E. Neville shall be compensated at the prevailing mileage rate (\$.20 per mile) for the additional 1,800 miles traveled.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. On January 3, 1983, the position of section foreman at Augusta, Wisconsin became vacant. This position was bulletined in accordance with schedule rules on January

11, 1983. On or about January 11, the Claimant requested permission to work the position at Augusta prior to the effective date of his assignment. Instead of assigning the Claimant to the job pending the posting of the position, the Carrier assigned junior section foreman T. Sturz. The Claimant bid was assigned this position on a permanent basis effective January 17, 1983. The Claimant commenced service on this position on January 17.

This case involves the application of Rule 16(b) which reads as follows:

"Vacancies of less than thirty (30) calendar days duration may be filled without bulletining, except that senior qualified employees in the district and group will be given preferred consideration."

The Organization contends as the senior qualified employee in the district and group for the vacancy involved here, the Claimant was contractually entitled under Rule 16(b) to be given preferred consideration for assignment thereto.

The Company agrees that the Claimant was entitled to "preferred consideration" but also argues that they give him that consideration. Under the Rule, they contend the Carrier is not required to give an employee any more than consideration. Accordingly, the management is free to exercise its discretion, so long as such exercise is neither arbitrary nor unreasonable.

The Board agrees that Rule 16(b) gives management a certain degree of discretion in making temporary assignments. However, unless there is a legitimate business reason for not assigning the senior employee, it must be concluded that management has abused their discretion to the extent of being arbitrary and capricious.

The only reason advanced during the handling of the claim by the Carrier prior to the appeal of the claim to the Board for not assigning the Claimant was because the "needs of the division" prevented it and that "The position occupied by Mr. Neville at Hudson was such that it could not be filled during the week in question; which was the reason for this denial." These reasons were cited during the first denial. At the highest level, the Carrier stated "claimant was considered for this vacancy, however operational needs would not allow his release at that time and he was retained in his current position at Hudson until the assignment date of January 17 when he was allowed to assume the position at Augusta."

In their submission, the Carrier expanded this explanation by stating that the Hudson "position requires special skills because of the interlocking plant at that location." However, there is no evidence that this last position was not advanced on the property. Therefore, we are limited to the reasons advanced prior to the appeal to the Board.

After considering the reasons advanced by the Carrier for not assigning the Claimant, we cannot conclude that they support the proposition that the Carrier's denial of the position to the Claimant was a proper exercise of management discretion. The Board needs more than blind and mere assertion that the needs of the Carrier prevented the removal of the Claimant at Hudson and his assignment to Augusta. The Organization on appeal pointed out the hollowness of the first level explanation and queried as to why junior employee Sturz couldn't have been assigned to Hudson. In spite of this, the Carrier failed to give any meaningful explanation of their "operation needs." Without any

elaboration as to what these needs might be or why the Claimant couldn't be relieved from Hudson, we are unable to assess the reasonableness of the Carrier's decision. The lack of any meaningful explanation compels us to conclude that the Carrier's exercise of discretion was without a basis in reason and therefore arbitrary and capricious.

While sustaining the claim in principal, the Board notes that there is no rebuttal to the Carrier's assertion that there is no basis for payment for any expenses prior to January 11, because that was the date instead of January 3 which the Claimant requested permission to fill the temporary vacancy. Accordingly, the Claim is sustained only between January 11 and January 17.

AWARD

In view of the foregoing, the Claim is sustained to the extent indicated in the opinion.



G. Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: May 8, 1985