

PUBLIC LAW BOARD NO. 2960

AWARD NO. 95
CASE NO. 126

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

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 failed to allow Trackman P. W. VanMeter to fill a temporary vacancy on a tie gang in Nelson, Illinois on August 22, 23, 24, 25, 26, 29, 30, 31, September 1, 2, 6, and 7, 1983. (Organization File 3T-4154; Carrier File 81-84-19).
- (2) Because of the aforesaid violation, Trackman P. W. VanMeter shall be reimbursed at the prevailing mileage rate for 2,640 miles and compensated for 48 hours at the Trackman's rate of pay.

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 Claimant was employed as a Trackman on the Carrier's Illinois Division. He had requested to fill a temporary position on the Camp Car Tie Gang that was working in the vicinity of Nelson, Illinois. The Claimant's request was turned down. He then filled a position at Allen, Illinois, 240 miles away. The claim then, is for the mileage and travel time required to go to Allen.

This case involves the application of Rule 16(b), which states:

"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."

There is no dispute that there were employees in the vicinity of the tie gang who were not only junior to the Claimant, but who were on temporary assignments.

The real dispute is whether these employees were assigned to the tie gang or another gang in the area. The Carrier argues they were assigned not to the gang which the Claimant requested to work, but to another gang, and moreover, all the employees in the tie gang were senior to the Claimant.

On the critical factual question, the Board concludes that the Union had presented more convincing evidence. They presented a letter written by the Foreman of the tie gang that indicates he supervised three employees on the dates in question, all of whom were junior to the Claimant. There is no rebuttal to this evidence.

Based on the facts, it is apparent that Rule 16(b) was violated. The Carrier is not obligated to bulletin assignments such as those in question. However, if an employee in the District or group, through their own initiative, becomes aware of a vacancy of less than 30 days and requests assignment thereto, they shall be given consideration in line with their seniority.

The Carrier, in denying the position to the Claimant, monetarily damaged the Claimant, because in order to be employed, he had to travel from the point which he had a right to work. This undoubtedly cost the Claimant time and money. However, it is difficult to believe that he traveled to and from Nelson (220 miles away), each of the days in question. Because we are left with no sound guidance on how many days he actually traveled, we will sustain the claim only for one round-trip for time and mileage at the prevailing rate.

AWARD

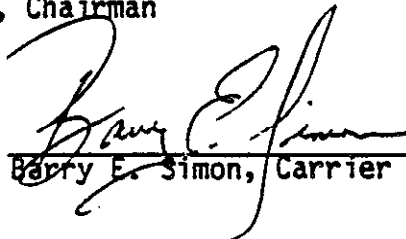
The claim is sustained to the extent indicated in the opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated:

