

PUBLIC LAW BOARD NO. 2960

AWARD NO. 126
CASE NO. 166

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 R. R. Wallingford to fill a temporary vacancy at Sterling, Illinois, on January 22 and 23, 1985.
- (2) Claimant R. R. Wallingford shall be reimbursed at the prevailing mileage rate for 128 miles and compensated for four (4) hours at the respective time and one-half 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.

On January 20, 1985, the Carrier issued a recall for furloughed employees to report for temporary work (less than 30 days) on January 21 at Sterling, Illinois and Clinton, Iowa. Claimant was called in seniority order, but advised the Carrier that he would be unable to work on January 21. However, he did indicate that he wished to work at Sterling. Instead a junior

employee worked at Sterling on January 22 and 23, whereas the Claimant was directed to work at Clinton. The claim represents the time and expenses he incurred travelling to Clinton in order to be employed.

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

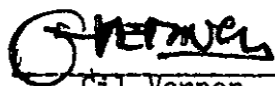
"Vacancies of less than thirty (30) calendar days duration may be filled without bulletining, except that senior qualified employees in the district in group will be given preferred consideration."

The Board has considered similar cases before. Employees who request to fill vacancies under Rule 16 (B) are entitled to "consideration" in line with their seniority. This gives the Carrier a certain amount of discretion. However, it is the Carrier's burden, if seniority in a temporary vacancy is to be overlooked, to justify this based on legitimate business reasons.

In the record on the property the position taken by the Carrier hinted at an acceptable defense. However, their position wasn't sufficiently developed on the property to be convincing. Accordingly, the claim is sustained.

AWARD:

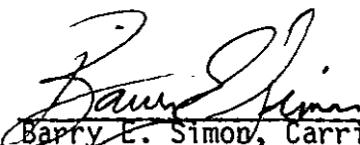
The claim is sustained.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Sept 10, 1987