

PUBLIC LAW BOARD NO. 2960

Award No. 158
Case No. 234

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

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

1. The Carrier violated the Agreement when an employee junior to Assistant Foreman S.K. Leonard was recalled from furlough to fill an assistant foreman's position at Denison, Iowa (Organization File 4LF-2187T; Carrier File 81-87-141).
2. Claimant S.K. Leonard shall be compensated for 40 hours' straight time and .5 hour's overtime at the applicable rate of pay for an assistant foreman.

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 disputed. The Claimant established seniority as an assistant foreman on the T-4 Track Department Seniority Roster, Zone B, on April 18, 1980. Mr. M. J. O'Leary had also established seniority on that roster as an assistant foreman as of May 8, 1980. The Carrier recalled O'Leary for a 40-hour temporary vacancy.

The Carrier defended recalling the junior employee because he had recently -- in connection with terminating a leave of absence -- become medically qualified. The Claimant had not taken a physical at the time of the recall, therefore, in the Carrier's opinion, he was not the senior qualified assistant foreman.

It is the opinion of the Board that the Carrier's defense is inadequate to excuse their ignoring the Claimant's seniority rights. There is no explanation as to why they couldn't have had the foresight to order a physical for the Claimant in

anticipation of the vacancy. There was no assertion that the vacancy was an emergency or in any other way couldn't have been anticipated.

AWARD

The Claim is sustained.

G. Vernon

Gil Vernon, Chairman

D. D. Bartholomay
D. D. Bartholomay
Employee Member

Joan M. Harvieux
Joan M. Harvieux
Carrier Member

Dated:

September 27, 1990