

PUBLIC LAW BOARD NO. 2960

AWARD NO. ~~167~~ 167
CASE NO. 268

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 and refused to allow Common Machine Operator R. K. Mathews to occupy a temporary position and instead assigned a junior machine operator (Organization File 4SW-1324T; Carrier File 81-88-155).
- (2) Claimant R. K. Mathews shall now be reimbursed motel expenses of \$156.96, meal expenses of \$100.00, the prevailing mileage rate for 600 miles expended on his personal vehicle and compensated the differential in the hour of service he rendered and those hours expended by the junior employee from June 6, 1988 through June 22, 1988."

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 claim has its genesis in an assignment notice issued by the Carrier. The notice was dated May 31, 1988, and indicated that Mr. J. A. Schaer was assigned to a Boom Truck

Operator position in Albert Lea, Minnesota, effective June 2, 1988. The Claimant was aware that Mr. Schaer was previously assigned to a 902 Common Machine Operator's position in Iowa Falls, Iowa.

The Carrier elected to fill the subsequent vacancy on the Iowa Falls Machine Operator position under Rule 16(b) pending bulletin of the assignment. On June 2, 1988, D. W. Rassman, who was a Common Machine Operator seniority date of July 17, 1978, submitted a written request to fill the position and was assigned to fill the position effective June 6, 1988. On June 3, 1988, the Claimant had sent a fax request under Rule 16(b) to fill the 902 Common Machine Operator's position in Iowa Falls, Iowa. On that same day he also sent a written request via U.S. Mail. The fax was received at 8 p.m. on Friday, June 3.

Since the office is closed weekends, the first opportunity the Carrier had to review the Claimant's request was after the start of the work day on Monday, June 6. By this time Mr. Rassman was already on the assignment in question. Rassman is junior to the Claimant.

The question presented by this case is whether the Carrier is obligated to allow a senior employee to bump a junior employee after an assignment has been filled pursuant to Article 16(b).

The Board notes there is no expressed rule which would provide for a displacement under these circumstances. As long as everyone has had a fair opportunity to express their preference in the position, then the Carrier need not suffer the disruption of a bump or possibly multiple bumps for vacancies of less than 30 days. In this case, there is no reason

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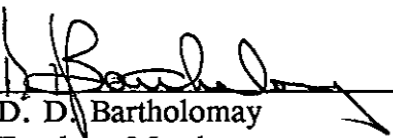
to believe that the Claimant did not have an adequate opportunity to express his preference prior to the time Rassman assumed the position.

AWARD:

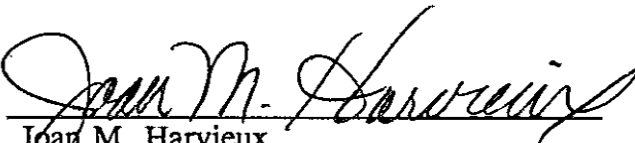
The claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



Joan M. Harvieux
Carrier Member

Dated: 7-25-91