

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13208  
Docket No. 13188  
98-2-96-2-95

The Second Division consisted of the regular members and in addition Referee Ekehard Muessig when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood Railway Carmen, Division of**  
( **Transportation Communications International Union**  
( **Southern Pacific Transportation Company**  
( **Western Lines**)

**STATEMENT OF CLAIM:**

“Claim of the Committee of the Union that:

1. That the Southern Pacific Transportation Company (Western Lines) on January 3, 1996 arbitrarily violated Rules 33(a), 32 and 104 by assigning Supervisor Driscoll from Ogden, Utah and other Carmen from the Denver & Rio Grande Railroad from another seniority point to change out three (3) pair of 70 ton wheels on a DRGW14699 at Groome, Utah, mile post 711.1.
2. That, accordingly, the Southern Pacific Transportation Company be ordered to compensate furloughed Carmen K. A. Hipwell and S. R. Crosbie and W. H. Thompson eight (8) hours each at the pro rata rate of pay and two (2) hours each at the overtime rate of pay for January 3, 1996.”

**FINDINGS:**

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The work at issue in this claim was performed on January 3, 1996. On that date, a Carrier Supervisor and two Carmen from the Roper Yard on the Denver and Rio Grande Western ("DRGW") Railroad were dispatched to change three pairs of bearing wheels on a DRGW hopper car in Groome, Utah. The Organization contends that the three Carmen Claimants (who had been furloughed due to a reduction of forces a number of years earlier) should have been called for the work.

The record shows that there are no Carmen assigned at Ogden. There has also been no evidence presented that the reestablishment of permanent Carmen positions was justified. Therefore, simply stated, the work in question arose because of an emergency and was not representative of an increase of the Carrier's business that would justify the need for additional shop craft personnel.

Accordingly, when this claim is viewed in the above context, we find that it lacks merit in a practical sense. It also does not have Agreement support.

It was unrefuted on the property that the three Claimants were fully employed or otherwise unavailable at the time that the disputed work was performed. Assuming that they would have been recalled and accepted the recall, they would have had to relinquish their seniority at their current work location and return to Ogden. If they declined the recall, they would have relinquished their Ogden's Carmen's Seniority.

On the other hand, had the Claimants returned to Ogden, the Carrier would have furloughed them after the work had been completed (ten hours work). This would have resulted in the loss of their seniority at their current site after being furloughed at Ogden.

The Board also finds no Agreement support for this claim. We note here, in particular, that the substance of the Carrier's denial letter to the Vice General Chairman, dated March 28, 1996, was not effectively countered on the property. In that letter, the Carrier, among other things, noted that Second Division Award 4824 addressed a similar circumstance as in this case and denied the claim. Moreover, the Carrier's reliance upon "Article III, Assignment of Work - Use of Supervisors" of the September 25, 1964 Agreement, was not refuted on the property.

In summary, as stated in Second Division Award 12570 which dealt with a similar claim as here ". . . the Board finds no rule support which requires that the furloughed employees should have been called for temporary work."

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February 1998.