



Award No. 17202

Docket No. MW-17513

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

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

(1) The Carrier violated the Agreement when it assigned Track Laborer Kenneth Bowen, instead of Track Laborer R. L. Gutierrez, to fill a student track foreman's position on the Eastern Seniority District. (System file MofW 148264)

(2) The Carrier further violated the Agreement when it failed to reimburse Track Laborer Kenneth Bowen for personal expenses incurred during the period he held the position of student foreman.

(3) Track Laborer R. L. Gutierrez be allowed the difference between the track laborer's rate of pay and the student foreman's rate of pay, commencing on July 5, 1966, and continuing thereafter for each day that the violation referred to in Part (1) of this claim continues to exist.

(4) Track Laborer Kenneth Bowen be returned to his home seniority district (Western District) and be reimbursed for all personal expenses incurred because of the violation referred to in Part (2) of this claim."

EMPLOYEES' STATEMENT OF FACTS: Claimant Kenneth Bowen has established and holds track laborer's seniority on the Western Seniority District of the Tucson Division and Claimant R. L. Gutierrez has established and holds track laborer's seniority on the Eastern Seniority District. Their seniority is confined to their respective seniority districts.

On July 5, 1966, the Carrier assigned Track Laborer Kenneth Bowen, who does not have any seniority on the Eastern Seniority District, to fill a student track foreman's position on said district. Track Laborer R. L. Gutierrez, with track laborer's seniority on the Eastern Seniority District dating from December 10, 1940, possessed the necessary qualifications and his seniority entitled him to have been assigned to fill this position.

The Carrier failed to reimburse Track Laborer Kenneth Bowen for personal expenses incurred during the period he was held away from his regular assigned headquarters on the Western Seniority District filling the student foreman's position on the Eastern Seniority District.

expenses incurred by him as a result of the Carrier's violation referred to in Part 1 of our Statement of Claim." By letter dated December 27, 1966 (Carrier's Exhibit "D"), Carrier's Assistant Manager of Personnel denied the claims.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. The Organization claims that the Carrier violated the Agreement when it transferred a track laborer (Bowen) holding seniority in one seniority district to another seniority district and established him in the position of student foreman at that point. Claimant Gutierrez is claiming the difference between track laborer rate of pay and student foreman rate of pay for the period of the duration of the alleged violation. Claimant Bowen asks to be reimbursed for all personal expenses incurred during the period he held the position of student foreman off his home seniority district.

It is the position of the Carrier that the rules of the Agreement between the parties hereto are applicable to the position of student foreman only insofar as rate of pay is concerned. They ask therefor that the claim be denied.

Award No. 15930 (Ives) rendered by the Board determined that the rules of the Agreement between the parties involved herein are applicable to the position of student foreman. We are not persuaded that this decision is palpably in error and are therefor bound thereby.

It follows that the transfer of Bowen from one seniority district to another must be done in accordance with the rules of the Agreement. In the matter at bar the Carrier has completely disregarded the Agreement and in doing so violated same.

The Agreement (Rule 29) is clear as to reimbursement of expenses. Having found that the student foreman position is subject to all the rules of the Agreement we hold that Bowen should be reimbursed for his expenses consistent with Rule 29.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1969.

CARRIER MEMBERS' DISSENT TO AWARDS 17202 and 17203,

DOCKETS MW-17513 AND MW-17514

REFEREE ROBERT A. FRANDEN

For the reasons set forth by Carrier Members in their dissent to
Award 15980 (Referee Ives) we dissent.

/s/ Harry S. Tansley
Harry S. Tansley

/s/ R. A. DeRossett
R. A. DeRossett

/s/ C. H. Manoogian
C. H. Manoogian

/s/ J. R. Mathieu
J. R. Mathieu

/s/ C. L. Melberg
C. L. Melberg