



Award No. 18877
Docket No. MW-19145

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DENVER AND RIO GRANDE WESTERN
RAILROAD 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 bulletin the position of truck driver on the B&S gang at Phippsburg, Colorado and when it assigned B&B Foreman Williamson to perform the truck driving work (System File D-9-17/MW-1-70).

(2) The Carrier be required to bulletin the position referred to within Part (1) of this claim in accordance with schedule rules.

EMPLOYES' STATEMENT OF FACTS: Positions of truck driver are subject to bulletin in accordance with Rule 11(a) which reads:

"Except for section and extra gang laborers, new positions and vacancies including temporary vacancies of thirty (30) calendar days or more duration created by the absence of the regular occupant of a position account sickness, leave of absence, etc., shall be bulletined to all employees holding seniority and assigned in the class in which the new position or vacancy occurs.

New positions shall be bulletined as much in advance of their establishment as possible but in no event later than ten (10) calendar days after they are established.

Vacancies, including temporary vacancies of thirty (30) calendar days or more duration, shall be bulletined as promptly as possible, but in no event later than ten (10) calendar days after the vacancy occurs. A temporary vacancy which starts out on an indefinite basis shall be bulletined as soon as it is known it will exist thirty (30) calendar days."

The successful applicants to positions of truck driver established seniority in the class and are required to meet certain qualifications and to perform work in accordance with Supplement "3" which, insofar as it is pertinent hereto, reads:

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated January 1, 1969, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts. (Exhibits not reproduced).

CARRIER'S STATEMENT OF FACTS: Phippsburg, Colorado is a terminal point of this Carrier and is located 168 rail miles west of Denver, Colorado.

Phippsburg, Colorado is the headquarter's point of B&B Gang No. 22. In November, 1969, when the General Chairman first requested a truck driver on the gang, this gang consisted of 1 Foreman, 2 Carpenters and 1 B&B Helper. There was no truck driver assigned to this gang at that time nor had there been one during the entire year 1969.

The B&B Helper on this gang, Mr. A. W. Humphrey, whose birth date is March 8, 1905, did not wish to drive the truck assigned to this gang, so the truck was driven by the B&B Foreman when it was used.

Carrier desires to call your attention to the Statement of Claim submitted to your Honorable Board by the Organization. This Statement of Claim was never presented to the Carrier during handling on the property.

OPINION OF BOARD: For the reasons set out in Award No. 18876 which was presented with this case and in which the same issue is involved we will deny the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.

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