

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25399
Docket Number MW-25433

Eugene T. Herbert, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when, on September 27, 1982, August 7, 1982 and on three (3) days each week September 27, 1982 through January 11, 1983, it assigned and used a laborer to fill a temporary Wood Working Machine Operator's position at the "Wood Preserving Works" instead of recalling and using furloughed Wood Working Machine Operator N. W. Hawkins (System File m-82-200/361-64-A).

(2) As a 'consequence of the aforesaid violation, furloughed Wood **Working Machine** Operator N. W. Hawkins shall be allowed three hundred sixty (360) hours of pay at the Wood Working Machine Operator's straight time rate.

OPINION OF BOARD: Claimant alleges a violation, inter alia, of the Agreement between the Parties in that Carrier failed to recognize a distinction under the Scope Rule **between a Machine** Operator and a **Laborer** from the same Department.

It is not disputed that the laborer, who Carrier assigned to perform periodic service as a machine operator in this case, was paid **under** the composite service rule. That rule contemplates that lower-rated positions will occasionally be called upon to perform the duties of higher-rate positions. **No** violation of the Scope Rule necessarily results from such employment. Accordingly, the Board finds that Organization has failed to carry its burden of proof that a violation of the Scope Rule took place here.

While the exact number **of hours** during which Carrier utilized a laborer as a machine operator is in dispute, it is clear from the record that the work involved was part, **rather** than full, time. Organization has also failed to prove the existence **of** any provision of its Agreement with Carrier which would obligate Carrier to recall Claimant in **such** circumstances. where no vacancy, temporary or otherwise, exists.

The **Board** concludes **that** Organization has neither demonstrated that it **was** Carrier's duty to establish a part-time position nor that the laborer who performed the **work** was prohibited from doing so.

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

That the parties ~~waved 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.~~

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of ~~Third Division~~

Attest: 

Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.