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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25900

Docket Number MW-24812

George V. Boyle, Referee

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Colorado and Southern Railway Company

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

1. The Carrier violated the Agreement when it laid off Trackman C. W. Breedlove on May 4, 1981 without benefit of five (5) days' advance notice (System File C-13-81/MW-442).

2. The claimant shall be allowed forty (40) hours of pay at his straight-time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: C. W. Breedlove, a Trackman at Walzenburg, Colorado, was assigned to duties on a Tie Gang. He alleges that his Foreman called him at 9:30 P.M. on May 3, 1981 to advise him that he need not report for work at 6:00 A.M. on May 4, since his position had been abolished. This, the Employees contend, was a violation of the Agreement, specifically, "Rule 13 - Force Reduction" which reads:

"Notice of Force Reduction (a.): Except as otherwise provided in this section (a), positions will not be abolished nor will forces be reduced until the employees affected have been given at least five (5) working days advance notice . . . ."

Accordingly they filed the above Claim on June 9, 1981.

The Carrier reply declined the Claim stating, "No job was terminated or abolished on the Tie Gang. What actually happened was that a senior employee who was displaced from another Gang, bumped the junior man on the Tie Gang (Clyde Breedlove) and the Extra Gang Foreman, H. W. Gonzales, allowed Mr. Breedlove to work two days after his displacement due to being short of men."

The Employees dispute this contention arguing that they are unable to find specific information in the Carrier's records to support the Carrier's position. Further they offer a letter dated "Jan. 19, 1981" (sic) from Michael A. Virgil, another individual who alleges that no such Senior Trackman had bumped since he "would have known who 'bumped' me."

The Carrier responds that the Claimant was not notified that his job had been abolished since that, in fact, had not occurred and that by letter of November 27, 1981, in response to the Employee's letter of October 26, 1981, the Carrier identified the senior man, Mr. Santistevan.

Without further exposition, the Board is forced to conclude the Organization has not sustained the burden of proof, which is required in such circumstances and must therefore 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;

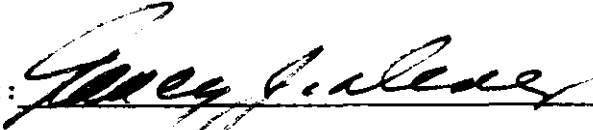
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: 

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

