

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26409
Docket **Number** MW-26074

Gil Vernon, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when **it** assigned and used Miscellaneous Machine Operator B. Brinkley instead of furloughed Group 5 Machine Operator J. R. **Henson** to fill a temporary vacancy as Group 5 Machine Operator on March 14 and 15, 1983 (System File **210-10-831**).

(2) Because of the aforesaid violation, Group 5 Machine Operator J. R. **Henson** shall be allowed ten (10) hours of pay at his straight time rate."

OPINION OF BOARD: The basic facts are not disputed. On March 14, 1983, an employe classified as a Miscellaneous Machine Operator was instructed to clean out the oil and fuel soaked ballast and the underneath material between tracks A, B and C at the engine servicing facilities in Winslow, Arizona. To perform the work involved, he used Motor Grader 80089. The Carrier claims that the backhoe, which he would have otherwise used to perform the work, was out of service due to radiator problems. The work took ten hours. The Claimant, who was on furlough at the time, asserts he is entitled to the work pursuant to Rule 2 since he has seniority thereunder in Group 5 Class 1.

Under the facts of this case, we are unconvinced that the Rules relied on by the Organization clearly mandate the recall of the Claimant. Thus, in view that the Rule is not clear and unambiguous as to these facts the Organization would have to present convincing evidence in the form of practice to sustain its burden. This evidence is lacking as well.

Accordingly, we are compelled to 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.

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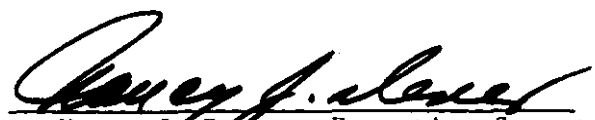
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1987.