

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 it directed and required Track Foreman R. P. Boney to assume the duties, responsibilities and work load of two (2) positions during the vacation absence of Track Foreman L. Johnson July 8 through 12, 1985 (System File MW-85-108/438-45-A).

(2) Foreman R. P. Boney shall be allowed an additional forty (40) hours pay at his straight time rate because of the violation referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Track Foreman assigned to Extra Gang 125 was absent on vacation for five days beginning July 8, 1985. While absent, the two laborers and one laborer driver from Extra Gang 125 were assigned to work with Claimant's Extra Gang 112. The combined work force, supervised by Claimant during this period was four employees, two laborers and two laborer drivers.

The Organization processed a Claim for an additional forty hours pay for Claimant contending that it was improper to "double up track laborers" into one Gang in this manner. While this Claim was being handled on the property, though, no evidence of a probative nature was submitted to support Claimant's case.

In its submission to our Board the Organization has submitted some material in support of its allegations. Also, for the first time, it argues that the Vacation Agreement was breached when more than twenty-five percent of the work of a vacationing employee was distributed to a single employee. We are unable to consider either because both were not included in the on-the-property handling. In Third Division Award 26228, we stated:

"It is a basic tenet of the Railway Labor Act that all evidence to support a Claim must be advanced by the Parties on the property prior to progressing the Claim to the National Railroad Adjustment Board."

This was not done in this instance and the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

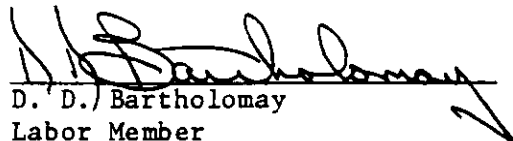
Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.

LABOR MEMBER'S DISSENT
TO
Award No. 27328 - Docket No. MW-27326

The Majority in this Award determined that, "while this Claim was being handled on the property, though, no evidence of a probative nature was submitted to support Claimant's case." And that, "also, for the first time, it argues that the Vacation Agreement was breached when more than twenty-five percent of the work of a vacationing employee was distributed to a single employee." It is apparent that the Majority failed to review the record before the Board and, in fact, ignored the evidence submitted in that record. Sufficient evidence was presented during the handling of this dispute on the property to allow for a sustaining Award and the General Chairman did raise the issue that the Vacation Agreement was violated not only in his appeal to the Carrier's highest designated officer but that issue was thoroughly discussed in the conference. The Majority erred in dismissing this claim and I, therefore, dissent.


D. D. Bartholomay
Labor Member