

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 Employes  
(Houston Belt and Terminal Railway 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 recall and assign Mr. J. E. Young to fill a temporary vacancy as machine operator (mower operator) June 1, 1985 to August 17, 1985.

(2) Because of the aforesaid violation, Claimant J. E. Young shall be allowed eight (8) hours of pay at the mower operator's straight time rate for each work day within the claim period 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 employe or employes involved in this dispute are respectively carrier and employes 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.

On July 10, 1985, the Organization filed a Claim on behalf of Claimant for eight hours pay each date, beginning June 1, 1985, that two Laborers, with less seniority, were worked as mower machine operators. On July 23, 1985, this Claim was denied.

On appeal, the Organization contended that Claimant was qualified to operate one of the tractor mowers and had a contractual right to be recalled by virtue of his superior seniority. Carrier's denial was on the basis that Claimant was not qualified and "...was therefore not assigned to the position."

Extensive further handling was given the matter prior to appeal to this Board. In Carrier's final letter of denial on the property, it is stated that Claimant did not object to the assignment of junior employees as mower operators in March 1985 when the two jobs were first assigned. It was further noted that Claimant did not place a formal bump on either of the jobs at the time he was furloughed, June 1, 1985.

The letter also commented on the Organization's argument that instead of reducing Claimant's laborer assignment, the junior man, one of the mower operators, should have been furloughed. Carrier's response being that, in accordance with Rule 3 of the Agreement, it regulates forces by reducing positions not needed, at which time the employees affected move to the jobs they can hold.

On appeal to this Board, both parties advanced arguments which seem to never have been dealt with while the Claim was under consideration on the property. Under well established holdings of the Board, such arguments cannot be considered - we must confine our decision to matters which were handled in the on property correspondence and discussions.

The matters which were handled on the property do not establish conclusively that Claimant was a qualified mower machine operator at the time of his furlough as a Track Laborer on May 31, 1985. In fact, it is constructively recognized in an appeal letter that he may not have been qualified, wherein it was stated:

"Mr. Young was not given an opportunity to 'qualify' on the tractor mower because Carrier arbitrarily held him away from assignment on said job and refused to give this man recognition he had the license, and refused chance to qualify as stated above."

Moreover, there is no evidence to support a conclusion that Claimant protested, or otherwise sought assignment as a mower machine operator when the two jobs were assigned to junior employees in March 1985, almost three months before he was furloughed.

Conclusive though is the fact that even after Claimant was furloughed he did not make a formal application to displace one of the junior mower machine operators. It would seem that this would be an essential prelude to assignment, progression of a claim for failure to assign or an arbitrary refusal for an opportunity to qualify.

The burden is on the Organization to establish essential elements of its Claim. In this matter it has not been established that Claimant demonstrated a bona fide entitlement for displacement onto one of the two mower machine operator positions held by a junior employee at the time of his furlough, nor has it been established that Claimant was qualified to work the assignment at the time.

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Award No. 28341  
Docket No. MW-27513  
90-3-86-3-772

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.