

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Messrs. J. C. McMorris and H. Freeman to fill temporary vacancies as machine operators (Fairmont Spike Driver) on November 5, 6, 7, 8, 11, 12, 13, 14 and 15, 1985 instead of assigning Machine Operators D. A. Williams and R. A. Powell (System Files B-1987-1/EMWC 86-2-12B and B-2117/EMWC 86-2-12A).

(2) Because of the aforesaid violation, furloughed Machine Operators D. A. Williams and R. A. Powell shall each be allowed seventy-two (72) hours of pay at the machine operator's (Fairmont Spike Driver) rate."

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.

Claimants, both Machine Operators, had been regularly operating Spike Driver machines on Gang T-1. On October 16, 1985, Claimants were furloughed since their machines were no longer required. Some three weeks later the gang, reduced in size, was moved to a new location. Spike Driver machines were needed and indeed were used for several hours a day for the period November 5 through November 15, 1985. Two Machine Operators assigned to the gang operated the Spike Driver machines during a nine day period, on a temporary basis, in addition to filling their regular positions.

It must be noted that the handling of this dispute on the property differed markedly, by both the Organization and Carrier, from the handling before this Board. However, it appears that the primary thrust of the Organization's position is that Carrier violated Rule 38(a)(6) of the Agreement. That Rule provides:

"Rule 38. Assignment of Employee

(a) Assignments to new positions, or to fill regular vacancies on existing positions, will be made in accordance with the following:

* * *

(6) Except as otherwise provided, employees will not be permitted to work unbulletined temporary positions or vacancies in class where they hold sufficient seniority to entitle them to a regular position."

It is the Organization's position that Carrier erred in assigning the two Machine Operators who had sufficient seniority to hold regular positions to the unbulletined temporary vacancies of operating the Spike Drivers.

Carrier asserts that it had the right to make the temporary assignments in question. It believes that there is no contract support for the Organization's position and that it had the right to assign the Machine Operators to the two vacant temporary jobs.

We are not persuaded that Carrier's actions in this dispute constituted the filling of an unbulletined temporary vacancy. The Organization has not met its burden of proof on that matter. This dispute is closely analogous to our thinking in Third Division Award 27698 involving the same parties. In addition, we believe that the particular circumstances in this matter are covered by the parties reasoning expressed in the Composite Service Rule (Rule 70(a)). For the foregoing reasons, the Claim does not have Rule support and in our judgment must be denied.

A W A R D


Claim denied.

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Award No. 28394
Docket No. MW-27719
90-3-87-3-186

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.