

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Southern Pacific Transportation Company (Western Lines)

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

(1) The Agreement was violated when the Carrier failed and refused to timely place Mr. S. J. Dooley on his regularly assigned grinder operator position headquartered at the Rail Welding Plant in Tracy, California within ten (10) days of June 25, 1986 (Carrier's File MofW 3-172).

(2) As a consequence of the aforesaid violation, Mr. S. J. Dooley shall be allowed thirty-two (32) hours of pay at the grinder operator's time and one-half rate and he shall be reimbursed for any and all expenses incurred as a result of the Carrier's failure to timely place him on the position in question."

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.

Claimant, who resided in Tracy, California, was the regularly assigned Grinder-Operator on Welding Gang No. 30, headquartered at Stockton, California. Pursuant to Bulletin No. 6-A, dated June 11, 1986, the Carrier advertised a vacancy on a Grinder-Operator position on Gang No. 3, stationed at Tracy. To obtain a position closer to his residence, Claimant bid on the vacancy. The Carrier issued a June 25, 1986 bulletin awarding Claimant the job inasmuch as he was the senior applicant. Even though Claimant was assigned to the Tracy Grinder-Operator position as of June 25, 1986, the Carrier held Claimant on the Stockton position until August 1, 1986, the date the Carrier procured a replacement for Claimant.

Rule 10(b) of the Schedule Agreement provides that the successful bidder on a position shall be placed on the position within ten days after he is assigned the job. To encourage the Carrier to comply with the ten-day job award period, Appendix 1 (dated June 4, 1981) provides that, if an employee is not placed on his newly assigned position within ten days, the employee will be paid the rate of his newly assigned job or the rate of the position he continues to work, whichever is greater, plus \$3.00 per workday, until the employee is placed on his new position. The Carrier represented to this Board that it paid Claimant \$3.00 for twenty workdays between July 5, 1986 and August 1, 1986. Claimant seeks additional mileage expenses for the 46-mile round trip commute between Tracy and Stockton and overtime earnings he allegedly would have earned if he had been allowed to begin working the Tracy Grinder-Operator job on or before July 5, 1986, in compliance with the ten day restriction in Rule 10(b).


Appendix I provides the exclusive remedy in this case. Appendix I grants an employee not placed on an awarded position within ten days, a penalty allowance of \$3.00 per workday and compensation at the higher of either the rate of the position he works or the rate of the newly awarded position. The employee receives the \$3.00 in liquidated damages regardless of whether or not the employee actually expends more or less than \$3.00 a day in commuting expenses to remain on the former position. Claimant herein was working a position that had the same rate as his newly assigned position and the Carrier allowed Claimant \$3.00 per day for each workday from the expiration of the ten day grace period until the Carrier placed Claimant on the Grinder-Operator position at Tracy. Thus, the Carrier fully complied with Appendix I.

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 28th day of August 1990.