

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10426) that:

1. Carrier violated the Agreement when it failed to utilize Mr. C. W. Conn on the position of Laborer at its Havana Coal Transfer Plant, Havana, Illinois on the date of Saturday, May 21, 1988 vice Mr. A. W. Hughes.
2. Carrier's action was in violation of the Agreement, expressly Supplement No. 10, Article II Procedures, Paragraph C(1) (B) contained therein.
3. Carrier shall now be required to compensate claimant, C. W. Conn, for eight (8) hours pay at the Laborer rate for the date of Saturday, May 21, 1988."

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 Saturday, May 21, 1988, a Master Mechanic took a one day vacation from his position at Carrier's Havana Coal Transfer Plant. The Carrier upgraded a Laborer to the Master Mechanic rate of pay, but required him to continue to perform the duties of his own position. The Organization contends the Claimant, who was furloughed at the time, should have been called to fill the Laborer's position. The Organization relies upon Supplement No. 10, Article II, Paragraphs C.1.(a) and 1.(b), which establish the procedures for filling vacation absences at the Havana Coal Transfer Plant. Those provisions read as follows:

"C. Vacation Absence

1. Operating, (Dumping), River, Clerical Forces and Master Mechanics
  - a. Upgrade senior qualified laborer on that shift on a work week basis.
  - b. Call senior qualified furloughed employee (Havana headquarter point), who has filed a furlough form indicating he desires to be considered available for extra and relief work, on a work week basis or until he obtains 40 hours in his work week. (See Section V.-G. & H.)"

The Carrier asserts the Organization's reliance upon Supplement No. 10 is misplaced, as the position Claimant sought to fill was not a vacation absence. Rather, it was the result of the upgrading of another employee to fill a vacation absence. The Carrier insists there could be only one vacation absence; that of the Master Mechanic. The Carrier further contends it was under no obligation to call the Claimant because it exercised its right under Paragraph C.2.(a) of Supplement No. 10, Article II to blank the Laborer's position when he was upgraded.

While the Carrier is correct in that it had the right to blank the Laborer's position when he was upgraded to Master Mechanic, it is evident from the record it did not do so. Obviously, work of that position needed to be performed, and the Laborer did it. If the Laborer was, in fact, upgraded, another employee should have been called to fill the resultant vacancy. The Claimant would have been the employee to call. The Carrier's failure to do so constituted a violation of the Agreement.

Based upon the record before the Board, we are unable to determine precisely the damages to which the Claimant is entitled. The Carrier avers he received protection benefits in an amount equal to the claim. Accordingly, we will remand the issue of damages to the parties for a determination as to whether or not the Claimant lost any compensation by not being called to work. If he did, the Claimant is entitled to the difference in loss of money.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 29047  
Docket No. CL-29273  
91-3-90-3-174

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Ill. this 22nd day of November 1991.