

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned junior employe W. A. Butler instead of Trackman D. G. Clifford to fill a trackman's position on the Henryetta Section force within the KO&G Seniority District from November 24, 1988 through December 12, 1988 (Carrier's File 890194 (MPR)).

(2) The Agreement was also violated when the Carrier permitted junior employe R. D. McDonald instead of Trackman D. G. Clifford to fill a trackman's position on the Calvin Section force on December 13, 14 and 15, 1988 and beginning once again on January 3, 1989 and continuing (Carrier's File 890347).

(3) The Agreement was further violated when the Carrier failed and refused to allow Mr. D. G. Clifford holiday pay for Christmas Eve, December 24, 1988; Christmas Day, December 25, 1988; New Year's Eve, December 31, 1988 and New Year's Day, January 1, 1989 (Carrier's File 890348).

(4) As a consequence of the violation referred to in Part (1) above, Mr. D. G. Clifford shall be allowed compensation at the trackman's rate for all straight time, overtime and holiday pay received by junior employe W. A. Butler beginning November 24, 1988 and continuing through December 12, 1988.

(5) As a consequence of the violation referred to in Part (2) above, Mr. D. G. Clifford shall be allowed compensation at the trackman's rate for all straight time and overtime hours worked by Mr. R. D. McDonald on December 13, 14, 15, 1988, January 3, 1989 and continuing until the violation was corrected.

(6) As a consequence of the violation referred to in Part (3) above, Mr. D. G. Clifford shall be allowed thirty-two (32) hours of pay at the trackman's straight time 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.

Three claims were filed on behalf of a furloughed Trackman in December, 1988 and February, 1989. The first two alleged that junior employees were used to fill a Trackman's position on Henryetta and Calvin Section forces in Claimant's stead. (In the first case, the junior employee held no seniority in the Kansas, Oklahoma, and Gulf Seniority Districts.) The third claim resulted from Carrier's failure to pay Claimant holiday pay for December 24, 25, and 31, 1988, and January 1, 1989.

This Board finds support in the record of the first claim (covering the period from November 24, 1988, through December 12, 1988) that a junior employee did in fact work as a Trackman, rather than as a Machine Operator, as Carrier maintained. Proof is lacking, however, in the second claim (for the period from December 13-15, 1988, and from January 3, 1989, forward) for the contention that Trackman's work was performed during this time. Absent such proof, the second claim cannot be sustained.

The Organization points out that had Claimant been properly assigned to fill the Trackman's vacancy beginning November 24, 1988, he would have received the holiday pay in question. This Board agrees and thus the third claim is sustained.


The Carrier has raised several procedural arguments that have been considered. They have no material impact, however, on the outcome of these claims.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Oliver - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.