

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 a Palestine Division Foreman to perform Flange Oiler Foreman work on the Red River Division beginning September 10, 1986 (Carrier's File 870196 MPR).

(2) As a consequence of the aforesaid violation, Red River Division Foreman T. A. Casteel shall be allowed pay:

'... for eight (8) hours each work day, including any holidays falling therein and any overtime accruing to the position of Foreman on Flange Oiler position headquartered at Longview, Texas, beginning September 10, 1986, and continuing so long as foreman from Palestine Division fills this job and works on the Red River Division.'

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.

This dispute involves Carrier's alleged failure to use Claimant to fill a vacancy on his Division and the use of employees from another Division instead, prior to the bulletining of the vacancy. From the record of the handling of this matter, it appears that on February 18, 1986, the General Chairman asked that a vacancy for a Rail Oiler on the Red River Division be bulletined. Claimant, who had seniority as a Track Foreman on the Red River Division, was furloughed on May 12, 1986. The Organization stated that employees from a different Division were filling the vacancy (and this was not denied by Carrier).

A number of errors were made in the handling of this matter on the property, including Carrier not attaching documents to correspondence and also the wrong bulletins being referenced by Carrier. In summary, however, it is apparent that the position was finally bulletined on December 6, 1986, and filled by bulletin dated January 12, 1987, by the senior qualified applicant.

The record of this dispute indicates that Carrier made at least one mistake in the assignment in question: using employees from one Division to perform work on another Division when qualified employees were available, in violation of Rule 2(a). While Claimant may not have been the most senior qualified employee, he was the only Claimant named by the Organization. This Board has long held that it is of no concern to Carrier whom the Organization names as Claimant (see Third Division Awards 7298, 10690, 18557, and many others). During the Claim period, from September 10, 1986, until January 12, 1987, Carrier should have used employees from the Red River Division whenever Rail Oiler work was needed on that Division. Carrier's liability ended when an employee was properly assigned by bulletin. Claimant herein must be compensated for each day that an employee from another Division was used to perform the work on the Red River Division during the claim period.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

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