

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 used a Texas Division employe to perform machine operator work on the Midland Valley Division from June 28 through June 30, 1988 (Carrier's File 880423 MPR).

(2) Messrs. R. J. Ridley and L. D. Hurst shall be paid an equal share of the forty-six (-6) hours worked because of the violation reference in Part (1) hereof."

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 employees involved in this dispute are respectively carrier and employees 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 August 9, 1988, the Organization initiated a Claim on behalf of two Midland Valley Division Machine Operators, stating as follows:

"On above mentioned dates [June 28-30, 1988], a Texas District Machine Operator Helper was operating a BBC-2, cutting brush on the Midland Valley Sub, Muskogee, Oklahoma MP 95 to MP 101. This is work that should have been performed by claimants as it was on their territory. The Carrier need not have brought a man from another District to do the work."

On August 26, 1988, the Superintendent made a timely reply, identifying the Claim for 46 hours' pay. The remainder of the reply concerned argument as to the Carrier's right to "utilize contractor's forces." The

reply made no reference to or denial of the work performed by the Texas District employee rather than by Midland Valley Division employees.

Among other contentions, the Organization argues that this reply is not in consonance with Rule 12, Section 2(a), which reads in pertinent part as follows:

"Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."
(Emphasis added)

The Carrier's response obviously failed to provide any "reasons" for the work assignment. This may well have been through the Carrier's misapplication of language applying to another situation, and the Carrier in later Claim responses does review the instance raised by the Organization. The Board, however, is clearly bound by the specific language of Rule 12, Section 2. On this basis, the Claim must be sustained, without reference to the arguments on the merits set forth by the Organization and the Carrier.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.