

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29983
Docket No. MW-28851
93-3-89-3-240

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 terminated the assistant foreman seniority rights of Mr. M. M. Salinas and refused to allow Mr. Salinas to exercise his seniority as an assistant foreman beginning January 2, 1987 (Carrier's File 870222 MPR).
- (2) As a consequence of the aforesaid violations, Mr. M. M. Salinas shall be allowed the:

'...difference in rate of pay between B&B Assistant Foreman and whatever B&B rate of pay he has had to work, when he could have been working as an Assistant Foreman, beginning January 2, 1987, for each hour worked by Claimant, continuing until he is permitted to fill Assistant Foreman's position and his seniority as such is restored.'"

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 employe 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 19, 1985, the Claimant, a foreman in the Carrier's B&B subdepartment, was dismissed from service for allegedly falsifying payroll documents. On September 26, 1986, the Claimant signed a leniency reinstatement form which allowed him to return to service with the understanding that he would relinquish all seniority rights as a foreman in the B&B subdepartment.

On February 27, 1987, the Organization filed a claim on behalf of the Claimant protesting his signing the waiver without representation and contending that the Claimant gave up his foreman rights not his assistant foreman rights. Therefore, the Organization argues, he should be compensated for the difference in the rate of pay between the assistant foreman and whatever rate of pay he has been earning.

The Carrier denied the claim and the Organization appealed.

The Carrier once again denied the claim contending that it cannot be held liable for the Claimant's decision not to have representation when he signed the waiver since it was solely his prerogative whether or not he wished to have representation. By not choosing representation, the Carrier contends, the Claimant acted as his own representative. With respect to the Organizations allegations that the Claimant did not forfeit his assistant foreman rights, the Carrier contends that the Organization did not meet its burden of proof to show how the Carrier violated the Agreement; and furthermore, the Carrier contends that this in itself should be handled as a separate claim.

This Board has reviewed the record in this case and we find that the Claimant knowingly and willingly executed the leniency reinstatement waiver which clearly provided for the restoration of only his B&B Carpenter and/or B&B Helper seniority rights. The waiver signed by the Claimant on September 16, 1986, states in full:

"This is to advise that I am agreeable to returning to the service of the Union Pacific Railroad on a leniency basis, without any claim for time lost and with the understanding that all seniority rights as B&B Carpenter (sic) and/or B&B Helper, and vacation rights will be restored unimpaired and that I will relinquish my rights as B&B Foreman with the full knowledge of my Local Chairman."

Thus, there is obviously nothing in the Agreement that specifically allows Claimant to retain his Assistant Foreman seniority rights. As a matter of fact, it is evident to this Board that the

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Claimant has waived all rights to the Foreman classification upon execution of the Agreement.

With respect to the Organization's argument that the Agreement is void because it was signed by the Claimant and not by the General Chairman, there is no prohibition against an employee making his own Agreement to return to work. Moreover, there is no contention that the Local Chairman and other Organization leaders were unaware of the leniency reinstatement agreement. The Agreement itself indicates that the leniency reinstatement is taking place "with the full knowledge of my Local Chairman."

For all the above reasons, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.