

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30814
Docket No. MW-30184
95-3-91-3-630

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis Southwestern Railway Company

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

(1) The Agreement was violated when the Carrier canceled a bulletin advertising a tie handler operator position and assigned a bridgeman, J. M. Turman, to operate Tie Handler 12300304 between Athens and Murchison, Texas beginning on October 1, 1990 instead of assigning furloughed Roadway Machine Operator B. M. Towels thereto (System File MW-90-86-CB/497-42-A).

(2) As a consequence of the aforesaid violation, Roadway Machine Operator B. M. Towels shall be allowed compensation for one hundred forty (140) hours' pay at his straight time rate of pay and pay for all time expended by Bridgeman Turman operating the tie handler continuing through October 26, 1990."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Commencing October 1, 1990, the Carrier used Bridgeman J. M. Turman (who holds seniority in the Bridge and Building Department and has no seniority in the Roadway Machine Department) to operate Tie Handler 12300304 to work with B&B Gang 4102 between Athens and Murchison, Texas, on the Corsicana Subdivision which had been working in conjunction with a tie gang. The Organization contends that Claimant (who holds seniority as a Machine Operator in the Roadway Machine Department) should have been assigned the work and that by assigning the work to Turman, the Carrier improperly crossed seniority lines.

Putting aside the question of Claimant's availability for work (the record shows that Claimant was on medical leave until October 29, 1990 and he then worked until January 2, 1991 when he was furloughed) we find that the Organization has not carried its burden. The Organization presented statements of employees asserting that the operation of tie handlers has historically and exclusively been performed by Machine Operators. The Carrier asserts that the piece of equipment used by Bridgeman Turman was a bridge tie crane (which is the same as a tie handler with safety clamps which attach to the rail so that the machine will not tip over when the boom is extended) and points to statements from employees and Supervisors that for many years B&B employees have been used to install bridge ties using various types of equipment including bridge tie cranes.

The record is thus in conflict. The burden, however, rests with the Organization to demonstrate that by practice the work has exclusively been assigned to Machine Operators. Third Division Award 21495. Given the conflict in this record, that burden has not been met. The claim will therefore be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 3

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By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.