

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31014
Docket No. MW-30740
95-3-92-3-538

The Third Division consisted of the regular members and in addition Referee Margo R. Newman, when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated when the Carrier failed to bulletin and assign a machine operator's position for the leased yard cleaner, used on the Kerrville Branch, San Antonio Yard, Kirby Yard, Beckmann Yard and between Flatonia and San Antonio, Texas, beginning April 8, 1991 and continuing (System File MW-91-82/501-84-A SPE).
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Machine Operator R. G. Marquez shall receive '...328 hours pay at his respective straight time rate of pay with 41 days to be used as qualifying days for vacation purposes and all on a continuing basis account yard cleaner used daily and not advertised.'"

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.

The Organization has raised a timely objection to evidence offered by the Carrier de novo in its Submission. This evidence includes its argument that the claim was not timely filed as well as any contest to the appropriateness of the requested remedy. Further, the contents of the July 1, 1992 letter from the Manager of Labor Relations to the General Chairman, and its attached statement from District Engineer E.L. Alcala, cannot be considered since the Carrier knew, or should have known, that the last day for filing the Notice of Intent in this case was June 30, 1992 under the provisions of Article 15 Section 1(c) of the Agreement, and that any submission thereafter would be untimely. None of these arguments and evidence will be considered by this Board. The Board's findings are based solely upon the record established on the property.

This claim seeks pay for Claimant, a furloughed machine operator on the San Antonio Division, on the basis of Carrier's failure to bulletin a temporary vacancy created by the operation of a leased yard cleaner in the San Antonio area for over thirty (30) days. Carrier assigned Machine Operator W.O. Brown to operate this piece of equipment, and, according to the written statement of Brown, he worked the yard cleaner a total of 145 days between February 3 and June 28, 1991. Carrier failed to bulletin this work and did not timely present any probative evidence in support of its contention that Brown operated the yard cleaner sporadically for a portion of 21 different days when his grade-all was down for repairs, and that the yard cleaner was moved to El Paso on June 18, 1991. The Organization has made out a prima facie showing that Carrier violated Article 8 Section 4 of the Agreement, which requires that temporary vacancies of more than 30 days be bulletined within 30 days previous to, or 15 days after, the date such vacancies occur.

Claimant was available and qualified to perform the disputed work, and was on furlough during a portion of the claim period, which we find runs from April 8 to the date in June when the yard cleaner was moved out of the San Antonio area. The Claimant shall be compensated at his straight time rate of pay and made whole for the number of days during the claim period when he did not work, and shall be credited with the appropriate number of qualifying days for vacation purposes as requested in the claim.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.