

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31214  
Docket No. MW-31664  
95-3-93-3-687

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Terminal Railroad Association of St. Louis

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

- (1) The Agreement was violated when the Carrier assigned junior employee J. King to perform Bridge and Building Subdepartment work between July 14 and August 14, 1992 instead of recalling and assigning A. Ramirez to perform said work (System File 1992-14/013-293-15).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Ramirez shall be compensated at the applicable rate of pay for the total number of hours expended by Mr. J. King in the performance of the work in question".

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 contends Carrier violated the contract when it used an employee junior in seniority to Claimant to perform extra work from July 14 to August 14, 1992.

Carrier, from the outset, stated Claimant did not file a request to work extra as required by the Rules. Carrier also said that the junior employee who did work, worked as a Truck Driver and was paid as a Truck Driver whereas Claimant was not so qualified.

The Organization argues Claimant did file a request for extra work and that the payment of truck driver wages to the junior employee who did work was a sham, just to keep Claimant from working. An allegation of such conspiracy demands proof. None is in the record.

Claimant was paid truck driver wages to perform truck driver duties.

Furthermore, when Carrier said it had no record of Claimant filing a written notice that the Claimant wanted extra work (a requirement in the Rule) Claimant was obligated to furnish proof that he did mail the request. An alleged undated copy of the filing, of and by itself, is not sufficient evidence.

The burden of proof necessary to gain a sustaining award is not present in this case. The Claim is denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.