

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31224
Docket No. MW-30853
95-3-92-3-710

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 Employees
(
(Southern Pacific Transportation Company
((Eastern Lines))

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

- (1) The Carrier violated the Agreement when it assigned Mr. M. F. Loeffler, Jr. to perform machine operator's work (operate weed mower) in San Antonio Yard, San Antonio, Texas from August 19 through 30, 1991 (System File MW-91-117/503-22-A SPE).
- (2) As a consequence of the aforesaid violation, furloughed Machine Operator R. E. McKinley shall be allowed eighty (80) hours of pay at his respective time and one-half rate and he shall be credited with ten (10) days for vacation qualifying purposes."

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.

Prior to August 19, 1991, the Carrier received a request from Mr. M. F. Loeffler, Jr. for an assignment near his home since his wife was close to giving birth to their child. The Carrier obliged Mr. Loeffler's request and assigned him to operate a weed mower in the San Antonio Yard.

The Organization took exception to the use of an employee who held no seniority as a machine operator to perform machine operator work, and filed the instant claim on behalf of Claimant who held seniority as a machine operator and who was on furlough during the period in question. The Organization contended that the Claimant was fully qualified and available to operate the weed mower had the Carrier afforded him the opportunity to do so.

The Carrier denied the claim alleging that it assigned Mr. Loeffler to operate the weed mower as a "favor to Mr. Lewis", the General Chairman, who had put in the request for Mr. Loeffler to be assigned close to home.

This Board has reviewed the record in this case and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it assigned Mr. Loeffler to perform the machine operator's work in the San Antonio Yard. A thorough analysis of the record makes it clear that employee Loeffler was allowed to work in the San Antonio Yard at the specific request of his General Chairman. Mr. Loeffler's wife was expecting a baby and he had requested the opportunity to work closer to home.

The Organization contended that its request was only that Mr. Loeffler occupy a helper position and that he never agreed to the Carrier having Mr. Loeffler operate a mowing machine. However, the record is clear that a job was created for Mr. Loeffler solely at the request of the Organization. The Carrier had to make use of Mr. Loeffler in that newly created position, all of which was done as a favor to the General Chairman and to Mr. Loeffler. Consequently, the Organization really has no basis to complain about the type of work that was performed by Mr. Loeffler. We find no violation of the Agreement in the assignment made by the Carrier at the request of the General Chairman.

This claim was filed on behalf of a furloughed machine operator. However, there was no violation that entitled that furloughed machine operator to any relief here. Therefore, the claim must be denied.

Form 1
Page 3

Award No. 31224
Docket No. MW-30853
95-3-92-3-710

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.