

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31452
Docket No. MW-30881
96-3-92-3-724

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
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it assigned Laborer T. J. Schenck to relieve Section Foreman S. C. Lewis on Section Gang #317 from August 12 through 16, 1991 (System File MW-91-64-CB/503-61-A).

(2) As a consequence of the aforesaid violation, Assistant Foreman L. L. Everhart shall be allowed forty (40) hours of pay, at the foreman's straight time rate, and any overtime worked, at the foreman's time and one-half rate, that was performed during the period 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 filed the instant claim on behalf of the Claimant when the Carrier assigned a Laborer to relieve a vacationing Section Foreman on Section Gang #317 for the period August 12 through August 16, 1991. The Organization contends that the Claimant was available, qualified, and held seniority as an Assistant Foreman within the Roadway Track Department.

The Carrier denied the claim contending that the Claimant is "the incumbent of an Assistant Foreman position and does not hold seniority as a Foreman". Furthermore, the Carrier argues that the Claimant was fully employed on the dates in question and that both the Claimant and the Laborer hold seniority in the Roadway Track Department.

This Board reviewed the record and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it utilized a Laborer to fill the position of a vacationing Foreman. Although the Organization contends that the Carrier was required to fill the five-day vacation vacancy of the Foreman with an Assistant Foreman, who is the Claimant in this case, the Organization has not cited any section of the Agreement which requires that the Carrier fill the temporarily vacant Foreman position with an Assistant Foreman.

Normally the Carrier has the right to manage its work force in what it sees to be the most efficient manner. If there is language in the Agreement that restricts the Carrier in some fashion, then that language must be followed when a vacancy occurs. In this case, the Organization has not cited any section of the Agreement which prohibits the Carrier from acting as it did in this case, that is, filling a temporarily vacant Foreman position with a Laborer.

Since the Organization bears the burden of proof in cases of this kind, and it has not met that burden, the claim must be 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 25th day of April 1996.