

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36599
Docket No. MW-35570
03-3-99-3-470

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. S. Vasquez from the machine operator position on Gang 3351 in Del Rio, Texas, to which he was assigned by bulletin on February 6, 1998 (System File MW-98-131/1135877 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. S. Vasquez shall now be compensated ‘... for Sixty Seven (67) hours at his respective straight time rate of pay, per diem pay, including weekends, for Eleven (11) hours of overtime worked and for the difference in pay between a trackman wages and a machine operator wages***”**

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 were given due notice of hearing thereon.

There is no dispute in this record that the Claimant submitted a bid for and was the senior qualified bidder awarded a Roadway Machine Operator position at Del Rio, Texas, effective February 6, 1998. Nor is there any dispute that the Claimant was held on his lower rated Trackman position for 17 calendar days through February 20, 1998.

The Organization argues throughout the on-property record that this was due to the Carrier's poor "planning of their work structure." The Organization maintains that the Claimant lost his higher rated straight-time rate of pay, his overtime work opportunities at the higher rate and the per diem allowances which would have been payable had he been able to properly utilize his seniority to the newly awarded position of Machine Operator on-line Gang 3351. The Organization maintains that the Claimant is due all wages lost due to the Carrier holding him on his lower rated Trackman position on headquartered Gang 4424.

The Board fully studied the record. The Carrier's position must prevail. The Carrier pointed toward Rule 11(d) which it held was controlling. That Rule states:

"When an employee is assigned to a position per paragraph (c) he will be permitted to transfer to his new position as soon as provision can be made for his release but in no event shall he be held for more than twenty (20) days unless the employe is agreeable to further extension of time."

There is absolutely no proof in this record that the Carrier violated the above Rule. The Claimant was transferred in 17 calendar days, although the controlling Rule permits up to 20 days. There is no demonstrated practice on this property shown by the Organization that the Claimant was to be paid for any losses incurred during the time he was held on his old position. There is no language which the Organization points to in Rule 11 (d) or anywhere else that would require the Carrier to pay the employee at the higher rated pay, per diem allowances or any gain or benefits lost during the time he was held on the lower rated position. Nor is there any language written to limit the Carrier's discretion beyond "as soon as provision can be made for his release."

The Board can find no support in this record for the position of the Organization and will therefore deny the claim. There is no challenge on the property to the Carrier's discretion which would lead the Board to any different conclusion.

**Form 1
Page 3**

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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 16th day of June 2003.