

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37648
Docket No. MW-36613
05-3-01-3-138**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Water Service Mechanics T. J. Farinha and J. R. Bovard for service in connection with a tunnel fire in Oregon commencing on October 23 and continuing through October 27, 1999 and instead assigned junior employees K. A. Yoder and J. C. Karl (Carrier's File 1216930 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. J. Farinha and J. R. Bovard shall now each be compensated for forty (40) hours' pay at their respective straight time rates of pay, forty (40) hours' pay at their respective time and one-half rates of pay and twenty three (23) hours' pay at their respective double time rates of pay.”**

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.

Claimants T. J. Farinha and J. R. Bovard hold seniority as Class 7 Water Service Mechanics within the Electrical and Mechanical Sub-department (former Water Services Sub-department) of the Western Seniority District, Sacramento Division dating from January 25, 1982 and September 26, 1983, respectively. On the dates in question, they were regularly assigned to their respective positions on Gang 8133 headquartered at Roseville, California. Their gang was regularly assigned to work Monday through Friday, eight hours per day with Saturday and Sunday as rest days.

K. A. Yoder and J. C. Karl hold seniority as Class 7 Water Service Mechanics within the Electrical and Mechanical Sub-department of the Western Seniority District, Sacramento Division, dating from August 1, 1995. It is uncontested that Yoder and Karl were junior to the Claimants.

On Saturday, October 23, 1999, a fire occurred at Tunnel No. 6 near Oakridge, Oregon, on the Oakridge District, Cascade Subdivision. In connection therewith, the Carrier elected to utilize Water Service Mechanics from the Sacramento Division to assist with the maintenance and repair work associated with the fire. The Carrier called and assigned Yoder and Karl. They worked at the tunnel fire location on Saturday, October 23, Sunday, October 24, Monday, October 25, Tuesday, October 26, and Wednesday, October 27, 1999.

According to the Organization, the Carrier violated the Agreement in this case when it assigned junior employees to work at the tunnel fire location rather than the senior Claimants who were qualified, ready, willing, and able to work at the location.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the claim fails for a number of reasons. First, the Carrier asserts that the claim did not explain how the Carrier violated the relevant provisions of the Agreement. Further, the claim did not identify the junior employees who completed the relevant work. The Organization had still not identified how the Agreement was violated nor had the Organization identified the two junior employees on August 23, 2000, when the conference regarding the claim took place. It was not until February 5, 2001, some 15 months after the initial claim, that the Organization identified the junior employees and in addition, changed the remedy requested, explaining that the initial remedy request was a "cut and paste" error. The Carrier contends that it was unable to properly respond to the claim due to its vagueness.

As to the merits, the Carrier contends that the instant situation comprised an emergency, and as such, it had great discretion as to which employees were to be assigned to the fire. The Carrier contends that it did not violate that discretion and asks that the claim be denied.

After a review of the evidence, the Board finds that the Organization has not been able to sustain its burden of proof in this matter. There is insufficient evidence in the record to demonstrate that the Organization identified either the specific Agreement violation or the names of the junior employees for approximately 15 months after the incident in question. In Third Division Award 28285, the Board held:

"The Board has carefully reviewed the record progressed by the parties. In essence, what we have before us is an initial Claim that was vague and lacked a sufficient specificity for the Carrier to act upon. Although correspondence in the record provides some additional clarification as to the specifics of the initial Claim, and while we understand the arguments made by the Organization before this Board, we must dismiss the Claim because it was . . . [not] specific enough for the Carrier to act upon it."

Likewise, in Third Division Award 33414 the Board quoted from Third Division 19960 which held, in relevant part, as follows:

“ . . . The awards emanating from this Board establishing the principle that claims must be specific and that Carrier is under no obligation to develop the claim for the petitioner are too numerous to mention. Suffice it to say that the principle is well established and not subject to dispute. The burden is on the Petitioner to present facts sufficiently specific to constitute a valid claim. The vagueness and indefiniteness of the instant claim is therefore fatal and renders a proper adjudication of the merits impossible.”

Based on the record in the instant case, we find that the Organization has been unable to meet its burden of proof. The claim will be dismissed.

AWARD

Claim dismissed.

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 7th day of December 2005.