

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24164  
Docket Number MW-23413

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned and used S. Garcia instead of V. Cadenas to fill a vacancy as laborer at Chicago, Illinois on January 1 and 2, 1979 (System File C#13/D-2303).

(2) Mr. V. Cadenas be allowed twenty-four (24) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant was on a furlough status and was recalled to service and worked on December 29, 1978. When he was told to report for work on Sunday, December 31, 1978 he stated that he was unable to do so. The Carrier needed laborers to perform snow removal work on January 1 and 2, 1979 but instead of calling and assigning the Claimant to such work the Carrier called and used junior laborers even though, according to the Organization, the Claimant was available to perform the work.

In the initial denial of the claim on the property the Carrier stated that because the Employee elected not to report to work on December 31 that it did not consider that it was obligated to call the Claimant on January 1 or 2. The Carrier concluded that since the Claimant was instructed to come to work on December 31 and was not told that he was laid off, "he should have come to work each day until instructed not to do so."

Certain procedural questions have been raised concerning the consistency of the claim however the Board is of the view that the portion of the claim submitted to us in this proceeding is properly here for consideration on the merits.

Although it is not totally clear from the handling of the dispute on the property, it appears, from a review of the Carrier's submission, that certain employees who worked on December 31, 1978 were advised to report on January 1 and January 2, 1979 and because a junior employee had "properly protected his assignment" on December 31 he would have been advised to report to work on January 1 and 2. Thus, the Carrier argues that it did not have an obligation to call this Employee on January 1 and 2.

The Board notes that the record, as handled on the property, is not a model of clarity as to the actual factual circumstances. However, we have noted that a pertinent rule shows that seniority must be considered in assigning work and certain Awards cited by the Organization have indicated that inability to work on one day does not necessarily equate with inability to work on subsequent days.

The record is silent as to any practice or procedure concerning these employees regarding reporting to work in an automatic fashion and in absence of any compelling evidence in that regard the Board is of the view that the Carrier had some obligation to advise the Employee that work was available on January 1 and 2 and cannot defend its actions merely by stating that the Employee failed to report to work on December 31.

As noted above, this result is dictated solely by the record we have before us and may not be precedent to future disputes where there is a different factual showing.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

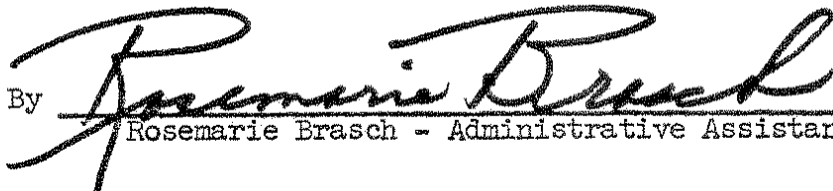
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.