

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25209
Docket Number MW-24979

I. M. Lieberman, Referee

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 failed to recall furloughed Welder Helper C. Hernandez to fill a temporary vacancy as welder helper on Gang #8 from November 23, 1981 through December 11, 1981, both dates inclusive (System File MW-82-30/336-96-A).

(2) Because of the aforesaid violation, Welder Helper C. Hernandez shall be allowed one hundred twenty (120) hours of pay at his straight time rate and pay at his overtime rate for the overtime hours expended on the aforesaid vacancy during the claim period."

OPINION OF BOARD: The facts in this matter are not in dispute. Claimant was a Welder Helper with seniority from August 13, 1979. On November 20, 1981 a Welder, Mr. Calderon, suffered a personal injury and remained out of service starting November 23, 1981. Carrier assigned his helper, Mr. Molinar to fill the temporary vacancy of Welder and called a track laborer with no Welder Helper seniority to temporarily fill the Welder Helper position. The record indicates that Claimant herein was furloughed at the time of this incident. Claimant was called in to fill the helper position on December 7, 1981 but did not report until December 8, 1981.

The Organization relies on Article 3, Section 1 (g) of the Agreement, which provides as follows:

"(g) When forces are increased, or in filling temporary vacancies, senior laid off employees in their respective rank, seniority group and seniority district will be given preference in employment. Employees desiring to avail themselves of this privilege and retain their seniority rights must file their name and address in writing with the appropriate division officer, with copy to District Chairman, within ten (10) calendar days of the date laid off, and renew same if address is changed during the period laid off. Failure to return to the service within ten (10) calendar days after being notified (by mail or telegram to last known address) will forfeit all seniority rights. Extension of seniority rights under this rule will expire unless returned to active service within four (4) years."

The Organization argues that Claimant was the senior laid-off Welder Helper in the seniority district. It is also maintained that the assignment of a track laborer, with no seniority in that class was clearly a violation of the Agreement.

(Carrier asserts that the particular vacancy was of a short term variety and it was not required to call an employee from furlough status to fill that position. Carrier indicates that the provisions of Article 8, Section 4 are applicable to this situation.) That section provides:

"SECTION 4. New positions and vacancies (including temporary vacancies of more than thirty (30) days will be bulletined at home stations of the employees concerned within thirty (30) days previous to or fifteen (15) days after the date such vacancies occur. New positions or vacancies including temporary ones may be filled pending bulletin. Vacancies and positions of more than thirty (30) days' and less than ninety (90) calendar days' duration and vacancies caused by granting leaves of absence of thirty (30) days or more, will be considered as temporary and bulletined as such. In making assignments to fill bulletined positions, the senior qualified employee holding seniority in the class involved, who files bid, will be assigned. Employees filling such positions pending bulletin, or assigned thereto by the Company, if no bids are received, may, when released, return to former position."

(On the contrary Carrier insists that it properly filled the vacancy on a short time basis under the provisions of the composite service rule (Article 16, Section 14 (a)). Carrier's principal thrust is that it is not required to fill a temporary vacancy on a seniority basis unless the vacancy is of 30 days duration or longer.

The Board does not agree with Carrier's reasoning. The provisions of Article 8, Section 4 deals with vacancies of 30 days duration or longer only, and requires bulletining. Article 3, Section 1 (g) has no such restrictions. The ten day rule in that section does not preclude Carrier from calling employees laid off for temporary slots; it merely indicates the penalty for failure to respond. In this case there was no attempt made to secure the services of the senior laid off employee (claimant herein) and thus Carrier erred.

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

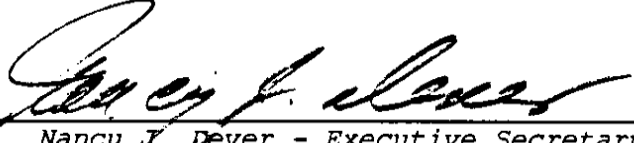
That the Agreement was violated.

A W A R D

Claim sustained for the period from November 23, 1981 through
December 6, 1981.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.