

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25399
Docket Number MW-25433

Eugene T. Herbert, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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, on September 27, 1982, August 7, 1982 and on three (3) days each week September 27, 1982 through January 11, 1983, it assigned and used a laborer to fill a temporary Wood Working Machine Operator's position at the "Wood Preserving Works" instead of recalling and using furloughed Wood Working Machine Operator N. W. Hawkins (System File MW-82-200/361-64-A).

(2) As a consequence of the aforesaid violation, furloughed Wood Working Machine Operator N. W. Hawkins shall be allowed three hundred sixty (360) hours of pay at the Wood Working Machine Operator's straight time rate.

OPINION OF BOARD: Claimant alleges a violation, *inter alia*, of the Agreement between the Parties in that Carrier failed to recognize a distinction under the Scope Rule between a Machine Operator and a Laborer from the same Department.

It is not disputed that the laborer, who Carrier assigned to perform periodic service as a machine operator in this case, was paid under the composite service rule. That rule contemplates that lower-rated positions will occasionally be called upon to perform the duties of higher-rate positions. No violation of the Scope Rule necessarily results from such employment. Accordingly, the Board finds that Organization has failed to carry its burden of proof that a violation of the Scope Rule took place here.

While the exact number of hours during which Carrier utilized a laborer as a machine operator is in dispute, it is clear from the record that the work involved was part, rather than full, time. Organization has also failed to prove the existence of any provision of its Agreement with Carrier which would obligate Carrier to recall Claimant in such circumstances, where no vacancy, temporary or otherwise, exists.

The Board concludes that Organization has neither demonstrated that it was Carrier's duty to establish a part-time position nor that the laborer who performed the work was prohibited from doing so.

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

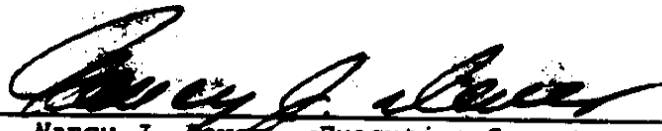
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.