

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26253
Docket Number MW-25983

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
(Western Lines)

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

(1) The Agreement was violated when, on October 15, 1982, the Carrier improperly permitted Southern Pacific Transportation Company Truck Driver M. S. Gutierrez to displace Truck Driver R. V. Ybarra from the truck driver's position on Extra Gang No. 31 on the former Harbor Belt Line Company property (Carrier's File MofW 36-232).

(2) As a consequence of the aforesaid violation, Mr. R. V. Ybarra shall be returned to the truck driver's position on Extra Gang No. 31 and he shall be allowed the difference between what he should have been paid at the truck driver's rate and what he was paid at the trackman's rate from October 15, 1982 until so returned to said truck driver's position."

OPINION OF BOARD: This dispute involves the elimination of Maintenance of Way work being performed by employees of the Harbor Belt Line effective March 1, 1977. By Agreement dated February 28, 1977, Carrier agreed to offer employment, with retention of HBL seniority, to four HBL employees, a Track Foreman and three Track Laborers (including Claimant herein). Sections 3, 4 and 5 of that Agreement provide as follows:

"3. The territory being transferred to SPTCo from HBL for maintenance purposes shall be merged with and become a part of seniority territory of the Los Angeles Division. The four employees transferring to SPTCo will be headquartered at Wilmington with work limits as set forth in Rule 25 to cover territory which will be added. These employees may be used elsewhere on the Los Angeles Division at discretion of appropriate carrier supervisor or official. When work is required to be done on HBL, it will be given to the former HBL employees provided they have the necessary skills required for work to be performed.

4. Former HBL employees will not be subject to displacement under BMW Rule 13, except by employees holding a former senior HBL seniority date, unless they have subsequent to March 1, 1977, utilized their SPTCo seniority to obtain a position not formerly an HBL position. Whenever a former HBL position is filled on the basis of SPTCo seniority, that position will become an SP position.

5. In case former HBL position becomes vacant, such position shall be filled by giving first preference to former HBL maintenance of way employees, except those who have any time exercised seniority to obtain an SP position under the conditions set forth in Item 4 above."

The Organization contends that when the employees were transferred to this Carrier, two Track Laborers' positions, a Truck Driver and a Track Foreman's position were created as part of Extra Gang No. 31 to cover HBL work. Carrier denies that this is a fact, stating that only the four positions specified in the Agreement were established. The Organization's position in this dispute is grounded on its version of the events which took place upon the Agreement of February 28 being implemented. However, no facts or evidence appears in the record to substantiate the Organization's version of the events. There is no evidence in the record to show that the position of truck driver was transferred from HBL to Extra Gang No. 31 nor is there any indication of how former HBL employee Esquivel obtained the truck driver position or on what basis. From this it follows that there was no evidence adduced in this dispute to establish that Claimant was on an HBL position when he was displaced.

It is well established and recognized by all that the burden to establish all the essential facts supporting a Claim is upon the Petitioner. In this dispute, the Organization has failed to meet its burden of proof. The Claim must be denied.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.