

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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 it failed to recall Machine Operator E. J. Lang to fill a temporary vacancy as crane operator September 24, 1984 through October 5, 1984 (System File MW-84-113/419-96-A).

(2) Because of the aforesaid violation, Machine Operator E. J. Lang shall be allowed eighty (80) hours of pay the Burro Crane operator's straight time rate and forty-three (43) hours of pay at the Burro Crane operator's time and one-half rate."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

The dispute arose as the result of a temporary vacancy for a Burro Crane Operator, created when the incumbent was off attending tamper school in Houston for the period September 24-28, 1984. The incumbent's position required a qualified Burro Crane Operator for that five (5) day period; a relief operator who was qualified and trained for that position filled that vacancy.

On September 28, 1984, the incumbent requested the week of October 1-5, 1984, off in order to be at home with his wife who just had a baby. That request was approved, and the same relief operator continued to operate the Burro Crane for an additional five (5) days.

The Organization contends that when a need was determined to fill the temporary vacancy on the Burro Crane, Carrier was required to fill that vacancy in accordance with Article 3, Section 1(g) which stipulates that in filling

temporary vacancies, senior laid off employees in their respective rank, seniority group, and seniority district will be given preference in employment. Additionally, Article 17, Section 9 requires that promotion to roadway machine operator positions will be based on seniority, ability and fitness. Ability and fitness being equal, seniority shall prevail. Since the Carrier assigned a machine operator junior to the Claimant, the Organization asserts that the Rules stated were violated.

Carrier argues that it needed the services of a qualified Burro Crane Operator to operate off a flat car in a work train picking up rail. It maintains that it is not required by the Agreement to recall a furloughed employee who is not qualified to operate the Burro Crane in order to fill a temporary vacancy. Carrier contends that the determining factor in the selection of the relief operator to operate the Burro Crane for the period in dispute was his documented experience in the operation of the crane. In addition, Carrier cites that since the vacancy was only for one week it was determined that it was not sufficient time to qualify Claimant in the operation.

It is a well established principle under prior Awards of this Board that Carrier has the right to determine the necessary qualifications and fitness of its employees. The Board will not substitute its judgment for this assessment unless it is shown that such determinations were biased, arbitrary or capricious.

Here, the Board cannot overturn Carrier's judgment that Claimant was not qualified to fill the vacancy. Stated simply, the Organization has not met its burden of showing that Carrier's decision was irrational or without a proper basis.

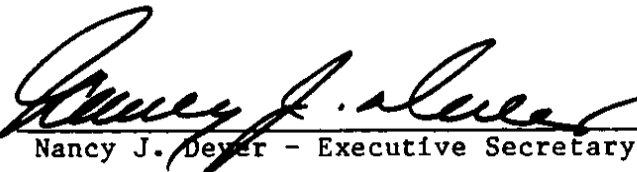
Accordingly, we must deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.