

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow Trackman J. F. Lang, III pay and per diem allowance for the work he performed on November 13, 1985 (System File 130-45-862/11-1620-74).

(2) Trackman J. F. Lang, III shall be allowed eight (8) hours of pay at his straight time rate and per diem allowance for November 13, 1985."

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 employes involved in this dispute are respectively carrier and employes 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.

Claimant holds seniority as a Trackman. When he reported to Gang No. 57 on November 13, 1985, he was told he had been displaced by a senior employee. He alleges the Foreman told him to work the day under another man's work number.

Pay records which Carrier furnished the Organization reflect that Claimant was compensated for 8 hours on November 11, 1985, and 8 hours on November 12, 1985, for work on Gang 57 and for 2 hours on November 14, 1985, and 8 hours on November 15, 1985, for work on Gang 61.

On March 3, 1987, the Organization furnished Carrier with an undated letter from a Trackman stating:

"In response to your letter about Steve Garancosky displacing John Lang III on Nov. 13, to the best of my knowledge John Lang worked that day on XG-57."

Another undated letter signed by another Trackman stated:

"I was working on Extra Gang #57 when J. F. Lang was bumped. I do not remember the date but remember him using the phone to see about replacement or something. If this is the day in question he did work."

On April 23, 1987, the day before the matter was progressed to this Board, Carrier received a letter from the Organization enclosing a letter from an Assistant Foreman as follows:

"April 5th 1987

TO WHOM IT MAY CONCERN,

I will testify to the fact that J. F. Lange was present and worked Monday Nov. 11th, Tuesday Nov. 12th, and Wednesday Nov. 13th, 1985, on Extra Gang #57, Headquarters at Wellington, KS. At the time J. F. Lang resided in Anthony, KS. which is 45 miles from Wellington, KS. therefore he is entitled to meal and lodging expenses for those days.

I was assigned as student foreman at the time on Extra Gang 57. I also lived in Anthony at that time and we car pooled to Wellington and back. O. F. Olivas Jr. was the Foreman."

Carrier objected to this letter as untimely but responded that the Assistant Foreman who wrote the letter worked on Gang 90 at Attica, Kansas, November 11 through 15, 1985.

In turn Carrier furnished the Organization with the following wire from the Foreman of Gang 57:

"Your wire Z500, February 5, 1896. J. F. Lang III was in my Gang 57, on 11-12-85, worked two hours because of bad weather. He was bumped and I told him to report AM to Waynoka to Martinez. He said he had 5 days to report so I don't know if he reported or not that AM."

A wire from yet another Foreman (Gang 61) was also furnished. It read in part:

"Trackman J. F. Lang III not worked under my supervision on Gang 61 on Nov. 13, 1985."

At best, it is apparent that we are faced with a factual conflict that we have no means to resolve. As was stated in Third Division Award 21436:

"This Board has only appellate jurisdiction. We have neither the duty or authority to weigh the evidence presented during the handling on the property. When we are faced with an irresolvable conflict of facts we are forced to dismiss the claim."

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.