

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employes  
(The Belt Railway Company of Chicago

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

(1) The Carrier violated the Agreement when it assigned junior Laborer T. Weston instead of Laborer J. L. Jimenez to perform welder mechanic helper's work (Carrier's File 450-MofW).

(2) Because of the aforesaid violation, J. L. Jimenez shall be allowed the difference between what he earned as a laborer and what he should have earned as a welder mechanic helper beginning December 1, 1982, continuing until such time as the violation is terminated."

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.

This dispute is before the Board based on the findings in Third Division Award 26254. In that earlier dispute the matter was remanded to the parties for further factual material.

A review of the record of this matter indicates that the parties failed to agree on the significance of the material which was examined in accordance with the directive of this Board. The conclusion must be reached that the Organization has failed to meet its burden of proof in this dispute. It is well established that the burden to establish all essential elements supporting a claim is upon the Organization (see for example Third Division Award 26253). The Claim must be denied.

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Award No. 28523  
Docket No. MW-25988  
90-3-84-3-336

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.