

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30259
Docket No. MW-30142
94-3-91-3-578

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the Carrier hired Track Laborer C. L. Naranjo and assigned him to perform track work on the Naravisa Gang beginning July 16, 1990, instead of recalling and assigning furloughed Track Laborer J. A. Vara (System File MW-90-62-CB/496-5-A).
- (2) As a consequence of the aforesaid violation, Track Laborer J. A. Vara shall be allowed compensation for two hundred and seventy-two (272) hours and pay on a continuing basis equal to all hours expended by the junior employee until the violation is corrected."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 is a time claim for all hours worked by a Laborer newly hired by the Carrier on July 16, 1990. The Organization contends that the Claimant was a senior furloughed employee at the time of the new hire, and was willing, able, and qualified to perform the duties of the position involved.

The Claimant had a seniority date of August 10, 1981. He was injured in 1984, returned to service in 1987, and was furloughed on December 23, 1987. The Roadmaster furnished a statement stating that the Claimant had stopped by his office in March 1988 and had resigned from the service of the Carrier due to personal reasons. Two Carrier Claims Representatives furnished statements that the Claimant made a similar statement to them while discussing his 1984 injury. The Carrier contends that it erroneously continued to carry the Claimant on its seniority list.

The Organization disputes the statements of the Carrier's representatives, and furnished a statement by the Claimant that he had not resigned as they claimed.

The Board concludes that it is not able to make a credibility determination and resolve these conflicting accounts of events at this stage of the proceedings. Having been presented with irreconcilable statements of fact in this matter, we must accordingly, under well-established precedents of the Board, dismiss the claim.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.