

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31204  
Docket No. MW-31414  
95-3-93-3-406

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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 the Carrier recalled a junior employee, A.L. Maldonado, to service on March 4, 1992, instead of recalling senior furloughed Laborers R.D. Cazares and B.G. Somoza on that date (Carrier's File MOFW 92-140 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R.D. Cazares and B.G. Somoza shall be compensated for sixty-four (64) hours, at their straight time rate, and four (4) hours, at the overtime rate, for the work performed by the junior employee from March 4 till March 16, 1992."

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.

Each Claimant and the junior employee who commenced working March 4, 1992, was recalled to service as called for in the recall rule. Carrier furnished copies of the recall letters as well as copies of the signed receipt.

It is to be noted that the junior employee and Claimant Somoza's signed receipt are each dated March 4, 1992, whereas Claimant Cazares signed receipt does not reflect a date of delivery.

It is to be further noted that the recall letter conforms with the Rule. It allows each Claimant ten days from date of receipt to respond, but it also requests each employee to call a toll free number at the "\*\*\*\*Tucson Labor Desk\*\*\*\*". Apparently the labor desk is the link to assignment.

The junior employee called in immediately upon receipt and made himself available for work on March 5, 1992, whereas both Claimants took the full ten days, calling in on Friday, March 14, 1992, to make themselves available for work Monday, March 17, 1992.

Based upon these facts, the claim must be denied. Neither Claimant has furnished any evidence to the contrary.

AWARD

Claim denied.

ORDER

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 1st day of November 1995.