

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31209
Docket No. MW-31549
95-3-93-3-563

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
(Eastern Lines)

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

- (1) The Agreement was violated when the Carrier assigned Machine Operator J. M. Rodriguez to operate a backhoe between Mile Posts 242 and 247 on the Kerrville Branch during the period of May 7 through June 24, 1992 instead of advertising and/or recalling and assigning furloughed Machine Operator R. A. Morales to perform the work (System File MW 92-124/MW 92-174 SPE).
- (2) As a consequence of the violation referred to in Part(1) above, Machine Operator R. A. Morales shall be allowed two hundred (200) hours pay at his respective straight time rate and he shall be credited with twenty-five (25) days for vacation qualifying purposes."

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.

The basics of this claim are that Carrier utilized an employee assigned to a weed mower to operate a backhoe on 25 work days over a period of 49 calendar days, thus Carrier violated the bulletin provision of the Agreement when it did not bulletin the position.

Section 4 of Article 8 reads, in pertinent part:

"New positions and vacancies (including temporary vacancies of more than thirty(30) days) will be bulletined at home stations of the employees concerned within thirty(30) days previous to or fifteen days after the date such vacancies occur. New positions or vacancies including temporary ones may be filled pending bulletin ***"

The Rule allows Carrier leeway in bulletining vacancies. If the Carrier anticipates a vacancy to exceed 30 days it is obligated to bulletin same. If, however, it is not known in advance that the vacancy will exceed thirty days, it is not obligated to bulletin same until 15 days after the vacancy occurs or more specifically, 45 days after the start of the vacancy.

In this instance, the Carrier had need for a backhoe operator only for 25 days within a period of 49 calendar days. Such use did not obligate the Carrier to bulletin the backhoe position.

The Carrier was not in violation of the Bulletin Rule. The claim will be denied.

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.

Form 1
Page 3

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By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.