

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31460  
Docket No. MW-32060  
96-3-94-3-440

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Southern Pacific Transportation Company

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

- (1) The Agreement was violated when the Carrier assigned junior employees E. Bindert, J. A. Chavez and W.C. Preciado to fill temporary vacancies during the period senior employee E. D. Perry was in furloughed status and the Carrier failed to recall or assign him to fill said vacancies (Carrier's File MofW 93-139 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. D. Perry shall be compensated ' . . . for eight (8) hours a day for each work day sixty (60) days retroactive from the date of this claim, as well as any overtime worked by the junior employees during the sixty (60) days.' "

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 Carrier argues this claim should be barred from handling by the Board because it was not timely filed on the property. The Carrier did not take this position in its handling of the claim on the property. In accordance with the rules of the Board we cannot consider new arguments, ergo, the Carrier's position will not be considered.

The Organization filed the initial claim with the Carrier on August 10, 1993, alleging a violation of the Agreement and claiming 60 days pay for the Claimant. The argument of the Organization is that junior employees were permitted to work temporary jobs while the Claimant was furloughed.

The record in this case is somewhat confusing. Apparently the Claimant was recalled to work on June 21, 1993. When the alleged violation of the Agreement occurred, or what Rule was violated is unclear.

The Carrier argued the Organization failed to meet its burden of proving a violation of the Agreement.

The Carrier's position is well taken. The Organization has failed to meet its burden. There is no proof the Agreement was violated.

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 25th day of April 1996.