

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32617
Docket No. MW-32213
98-3-95-3-9**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Herzog Contractor) to perform Group 7, Class 3 Machine Operator's work (unloading rock screenings) on the Galveston Subdivision in the vicinity of Rogers, Texas on February 17 through 23, 1993 and failed to assign a miscellaneous machine operator as required and contemplated by the March 19, 1981 Letter of Understanding (System File 100-A8-9329/93-11-567).**
- (2) As a consequence of the violation referred to in Part (1) above, the senior Southern Region (Seniority District 2) Group 7, Class 3 Machine Operator, who was furloughed because of the Carrier's reduction of forces and/or working in a lower class, shall be compensated, at the Group 7, Class 3 Machine Operator's rate of pay, for all hours worked by the contractor's employees in the performance of the above-described work on February 17 through 23, 1993.”**

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 were given due notice of hearing thereon.

The following facts are not in dispute: From February 17 through 23, 1993, the Carrier retained Herzog Contractor to unload rock screening in the vicinity of Rogers, Texas, and assigned Group 7, Class 3 Machine Operator C. P. Sanchez to assist with that work. The use of Herzog equipment on the Santa Fe System had been the subject of a prior understanding between the parties dated March 19, 1991, which reads in pertinent part as follows:

"In our conference it was agreed that when Herzog equipment is utilized on the Santa Fe System a like amount of miscellaneous machine operators from the Maintenance of Way Department would be assigned on the job where the work was taking place."

Although the Organization does not dispute that the Carrier assigned the requisite number of Machine Operators to work with Herzog on the dates in dispute, it maintains that the Agreement was nonetheless violated because Carrier assigned an employee already on duty instead of dispatching the senior qualified employee in the class who was working on a lower rated position or furloughed at the time, in accordance with Rule 10.

The burden was upon the Organization in this matter to adduce compelling evidence in support of its allegation that the Agreement prohibits Carrier from sending another Machine Operator working in the area to assist Herzog. The Letter of Understanding specifically addressing Operators assisting Herzog contains no such limitations, nor does the Agreement. By strong inference, Rule 37 (b) of the Agreement expressly sanctions Carrier's action in that it provides for "Employees Performing Detached Service," and speaks of employees "who are required in the course of their employment to be away from their regular assignment . . . including employees filling relief assignment or performing extra or temporary service."

In view of those facts, and in the face of the demonstrated past practice in this regard as evidenced by Carrier documents in the record before us, the Board has no alternative but to respectfully deny the claim.

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 23rd day of June 1998.