

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33468
Docket No. MW-32512
99-3-95-3-409**

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

**(Brotherhood of Maintenance of Way Employes
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 Carrier violated the Agreement when it assigned Mr. S.L. Mackey to a Group 7 Class 3 Machine Operator’s position (tie handler) at Dodge City, Kansas beginning February 9, 1993 and continuing, instead of properly assigning said position in accordance to the provisions of Rule 10 (System File 50-10-9319/93-11-578).**
- 2. As a consequence of the violation referred to in Part (1) above, the senior Eastern Region, Seniority District 2, Zone 2 employee of in force and/or working in a lower rated position shall be compensated at the Group 7 Class 3 Machine Operator’s rate for all hours worked by Mr. S.L. Mackey in the performance of Group 7 Class 3 Machine Operator’s work beginning February 9, 1993 and continuing until the violation ceases.”**

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 merits issue raised in this dispute is whether Carrier violated the provisions of Rule 10 when, beginning February 9, 1993, it detached Group 7 Class 3 Machine Operator S. L. Mackey from his position at Garden City, Kansas, and utilized him as a Group 7 Class 3 Machine Operator at Dodge City, Kansas. The record shows that, effective February 8, 1996, Machine Operator Mackey was assigned to relieve a Class 3 Machine Operator position on the Garden City Section. However, when he reported to that job, the tie handler he was to operate had been relocated to Dodge City, Kansas. Therefore, Roadmaster Jones instructed Mr. Mackey to proceed to Dodge City, Kansas, where he spent the balance of the workweek operating the tie handler. It is not disputed that Mr. Mackey was compensated for this work at the Class 3 Machine Operator rate of pay and also paid expenses in accordance with Rule 37(b).

On February 23, 1993, the BMW General Chairman submitted the claim noted supra, not on behalf of Mr. Mackey but rather on behalf of "the senior Eastern Region, Seniority District 2, Zone 2 employe, off in force and/or working in a lower-rated position," seeking the Machine Operator's rate for all hours worked by Mr. Mackey at Dodge City. The crux of the claim is the assertion that this situation constituted filling of a "temporary vacancy" by managerial fiat rather than by the process set forth in Rule 10 of the Agreement. Specifically, the General Chairman asserted:

"On February 8, 1993, S.L. Mackey was assigned to a temporary vacancy as Group 7 Class 3 Machine Operator at Garden City, Kansas. At/or near close of shift on February 8 Machine Operator Mackey was instructed by Roadmaster Jones to report to Dodge City for the remainder of the work week, to operate Tie Handler AT4263. Machine Operator Mackey was instructed to call his time worked into the Foreman at Garden City, so time sheets would reflect that Mackey was on his assigned position in Garden City.

These (sic) actions of the Carriers demonstrates the fact that there was a temporary vacancy on the Tie Handler at Dodge City that needed to be

filled. Carrier's line supervision elected to circumvent the Agreement and improperly assign this temporary position with an employee of his choice.

We cannot agree that the Carrier has complied with the aforequoted rule of our Agreement, thus we ask allowance of this claim."

Carrier denied the claim, maintaining at the outset that the speculative identification of a Claimant did not "meet or satisfy" the requirements of Rule 14-(a)(1) of the Agreement. We are persuaded that the claim was fatally defective in that regard and therefore neither express nor imply any opinion concerning whether Rule 10 was violated in these particular circumstances. The Organization's failure to properly identify the allegedly aggrieved employee violated Rule 14-(a)(1) of the Agreement and stands as a bar to further consideration of the claim. In that connection, Carrier's position that there were no "off in force" Machine Operators stands unrefuted and the Organization failed to identify any senior eastern Region employee working in a lower-rated position who was qualified, available and entitled to be utilized in lieu of Mr. Mackey to operate the tie handler at Dodge City on claim dates.

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 22nd day of September 1999.