

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24164**  
Docket Number **EW-23413**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned and used S. **Garcia** instead of V. **Cadenas** to fill a vacancy as laborer at Chicago, Illinois on January 1 and 2, 1979 (System File **C#13/D-2303**).

(2) Mr. V. **Cadenas** be allowed twenty-four (24) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant was on a furlough status and was recalled to service and worked on **December 29, 1978**. When he was told to report for work on Sunday, **December 31, 1978** he **stated that** he was **unable** to do so. The Carrier needed **laborers to perform** snow removal work on January 1 and 2, 1979 **but instead** of **calling** and assigning the Claimant to such work the **Carrier** called and used junior laborers even though, according to the Organization, the **Claimant** was available to perform the work.

**In** the initial denial of the claim on the property the Carrier stated that because the **Employee** elected not to report to work on **December 31** that it did not consider that it was obligated to call the Claimant on January 1 or 2. The **Carrier concluded** that since the **Claimant** was instructed to come to work on **December 31** and was not told that he was laid off, "he should have come to work each day until instructed not to do **so**."

Certain procedural questions have been raised concerning the consistency of the claim however the **Board** is of the view that the portion of the claim **submitted** to us in this proceeding is properly here for consideration on the merits.

Although it is not totally clear from the handling of the dispute on the property, it appears, from a review of the **Carrier's** submission, that certain **employees** who worked on **December 31, 1978** were advised to report on January 1 and January 2, 1979 and because a junior employe had "properly protected his assignment" on **December 31** he would have been advised to report to work on January 1 and 2. Thus, the Carrier argues **that** it did not have an obligation to call this **Employee** on January 1 and 2. X-1

The Board notes that the record, as handled on the property, is not a model of clarity as to the actual factual **circumstances**. However, we have noted that a pertinent rule shows that seniority must be considered in assigning work and certain Awards cited by the Organization have indicated that **(inability to work on one day does not necessarily equate with inability to work on subsequent days.)**

The record is silent as to any practice or procedure concerning these employes regarding reporting to work in an automatic fashion and in absence of any **compelling** evidence in that regard the Board is of the view that **(the Carrier had some obligation to advise the Employee that work was available on January 1 and 2 and cannot defend its actions merely by stating that the Employee failed to report to work on December 31.)**

As noted above, this result is dictated solely by the **record we** have before us and may not be precedent to future **disputes** where there is a different factual showing.

**FINDINGS:** The Third Division of the **Adjustment Board**, upon the whole record and **all** the evidence, **finds** and holds:

That **the parties waived** oral hearing;

That the Carrier and the **Employes** involved in this dispute are **respectively Carrier and Employes** within the **meaning** of the **Railway Labor Act**, as approved June 21, 1934;

That this Division of the **Adjustment Board** has jurisdiction over the **dispute involved** herein; and

That the Agreement was violated.

A W A R D

**Claim** sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third Division**

**ATTEST:** Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of **February 1983**.