

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 13 (a), 25 (a) and (c), 26 (a), 107 (a), and 108 of the June 1, 1960 controlling agreement when they denied Electrician C. R. Gallagher his seniority rights under the provisions of the agreement on October 17, 1978 and continuous.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician C. R. Gallagher eight (8) hours pay at time and one-half (1½) rate for October 17, 1978 and continuous.

Findings:

The Second 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 Firemen and Oilers were advised of a possible third party interest, but declined to intervene.

On October 11, 1978 the Carrier issued Bulletin No. 127 asking for bids on the position of Crane Operator (Job No. 210). The Bulletin included the following information:

"Vice: H. M. Doyle - Off Sick
TEMPORARY POSITION
S. G. Hamilton Riding Bulletin"

Bids were received from three Electricians, the most senior of which was C. G. Gallagher, the Claimant herein. Bids were also received from two employees in the Laborers' craft, one of whom was S. G. Hamilton. As noted above, Hamilton was riding the bulletin since October 11, 1978 (for which there is a separate claim, see Award No. 8851, considered simultaneously with this dispute by the Board).

The Organization argues that Gallagher was denied the position in violation of Rules 13 (a), 25 (a), and Classification of Work Rules 107 (a) and 108. The Carrier refers to Rule 13 (c). Pertinent excerpts from these rules are as follows:

"RULE 13 (a) New jobs created and vacancies in the respective crafts will be bulletined and the oldest employees in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling.

...

(c) Vacancies, except vacation vacancies, known to be of 15 days or more duration will, if the vacancy is to be filled be advertised as 'temporary vacancies' ...

Rule 25(a) Seniority of employees in each craft covered by this agreement shall be confined to the point and seniority subdivision employed.

Rule 25 (c) lists seniority rosters of various crafts (Machinists, Boilermakers, etc.) and includes:

<u>"Craft</u>	<u>Seniority Division</u>
Electrical Workers	Electricians Apprentices Electrician Helpers Generator and Motor Attendants Crane Operators ..."

There is no question but that "Crane Operator" is a separate seniority division (or "subdivision") as specified in Rule 25 (a) and (c). Thus, up to October 11, 1978 when the bulletin was posted, there was no one with seniority as Crane Operator at the specified location, other than the employee who was on illness leave. No Electrician among the bidders could claim that he held seniority as Crane Operator over any other employee.

The rules for eligibility to bid, however, are different. Rule 13 (a) states that in the event of "vacancies in the respective crafts" (emphasis added), preference shall go to "the oldest employee in point of service". "Craft" here means "Electrical Workers" and subsumes various divisions including Crane Operator. "Oldest employee in point of service" by logic refers to employees in such crafts; this is something quite different from "seniority" in any of the various divisions.

The Board therefore finds that the bulletin was properly posted, even in the absence of an employee with Crane Operator seniority who might bid. Three employees, all in the Electrical Workers' craft, placed bids. Rule 13 (a) mandates that the "oldest" employee (Gallagher) be selected.

For the Carrier to place an employee in the position on the date that the bulletin is posted and then declare that he has, by this action alone, acquired Crane Operator seniority, would be to make Rule 13 (a) a nullity.

The Carrier refers to Award No. 5575 (Ives) to define Crane Operator seniority. This award, however, concerns only the right to overtime work as between an available off-duty Crane Operator and a scheduled Electrician, and provides no guidance here.

The Carrier also notes that the Organization considered Hamilton "as being obligated to pay dues to the IBEW" from 60 days of the date of his placement on the Crane Operator position on October 11, 1978. This is hardly acquiescence by the Organization. It simply means that an employee, performing work of the Electrical Workers' craft -- as directed by the Carrier -- is subject to dues obligation, and nothing more.

While the Carrier erred in its selection for the Crane Operator position, the remedy sought by the Organization is inappropriate. Although denied the position of Crane Operator, there is no showing that the Claimant lost wages as a result, since there is nothing to indicate that he failed to perform his assignment as Electrician.

A W A R D

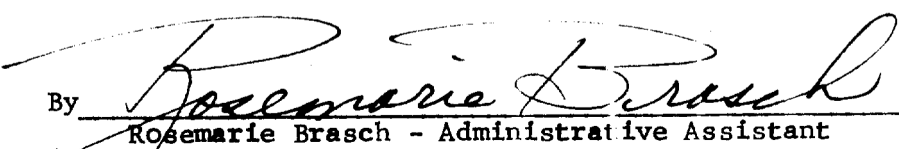
Claim No. 1 sustained. The Claimant is to be awarded seniority as Crane Operator from October 18, 1978 and to be placed as such as if he had been awarded the "Temporary Position" in Bulletin No. 127.

Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of January, 1982.