

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
{ Seaboard Coast Line Railroad Company

Dispute: Claim of ~~Employee~~:

1. That in the Waycross, Georgia Shops on October 31, 1977, November 1, 1977, November 2, 1977, November 3, 1977, November 4, 1977 and November 7, 1977 the Seaboard Coast Line Railroad Company violated the controlling Agreement when Laborer George Dryden was assigned to operate overhead traveling crane instead of calling and/or notifying Overhead Traveling Crane Operator J. T. Taylor who was available for work on October 31, 1977, R. D. Murray who was available for work on November 1, 1977, J. A. Peacock who was available for work on November 2, 1977, L. Herrin who was available for work on November 3, 1977, M. King who was available for work on November 4, 1977 and J. T. Taylor who was available for work on November 7, 1977.
2. That Overhead Traveling Crane Operator J. T. Taylor be compensated seventeen (17) hours at the punitive rate of pay and Overhead Traveling Crane Operators R. D. Murray, J. A. Peacock, L. Herrin and M. King be compensated for eight and one-half (8½) hours each at the punitive rate of pay by reason of Laborer G. Dryden's assignment to perform Overhead Traveling Crane Operator's work in violation of Rules 15, 95(a), (b) & (c) and Appendix "Q" on October 31, 1977, November 1, 1977, November 2, 1977, November 3, 1977, November 4, 1977 and November 7, 1977.

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 organization was notified of this dispute and elected not to enter an appearance.

This dispute centers on work performed on the overhead traveling crane on six days on the second shift, at a time when the regularly assigned Electric Traveling Crane Operator was absent owing to illness. Other regularly assigned Crane Operators were scheduled on the first shift.

Rule 95 is applicable and reads as follows:

"Rule 95 - ~~ELECTRIC~~ TRAVELING CRANE OPERATORS

- (a) Electric traveling crane operators will be assigned to operate overhead traveling cranes having a capacity less than forty (40) tons. This not to include such cranes operated from the floor.
- (b) Electric traveling crane operators, capacity of forty (40) tons and over, shall be paid the rate as shown in Rule 49 of this agreement.
- (c) When necessary to fill electric crane operator positions, electrician helpers will be used if there are no electric crane operators available."

According to the record, Electrician Helpers were asked to perform the work on the six days but declined to accept the assignment. The Carrier thereupon utilized a Laborer from another craft to perform the crane operating work. (That this employe subsequently established seniority as an Electrician Helper has no relevance here to the dates at issue.)

The Carrier argues that Rule 95 gave it the right to use an Electrician Helper in the second-shift vacancy. When such Electrician Helpers did not accept the work, the Carrier claims it may fill the position with another employe, having fulfilled its obligation under Rule 95. The Organization argues that Crane Operators, assigned to the first shift, were readily "available" and thus should have been assigned the second-shift work on an overtime basis. The Organization thus goes so far as to argue that not only is the use of a Laborer from another craft improper but that even the use of an Electrician Helper would be improper since, by the Organization's definition, the first-shift Crane Operators were "available".

In this dispute, the Board need not review the relative rights of first-shift Crane Operators vs. second-shift Electrician Helpers. (This point, however, is dealt with in Award No. 8558 (Roukis), involving the same parties and the same rule.) The question for resolution here is whether, under Rule 95, an employe from another craft may be utilized.

Rule 95 (a) is clear and unambiguous and put in mandatory terms: "Electric Traveling Crane Operators will be assigned to operate overhead traveling cranes having a capacity less than forty (40) tons." (Emphasis added). The rule contains an exception -- in paragraph (c) -- concerning the use of Electrician Helpers. Whatever the extent of such exception, it assuredly does not include any other classification than Electrician Helper. Thus, for any other category of employe, the rule reverts to Paragraph (a) which mandates the assignment of Crane Operators to the work.

The Organization cites a previous Carrier decision involving 14 similar instances. Although this decision was not made at the highest Carrier level,

it is nevertheless supportive of the view taken here by the Board.

The Carrier refers to previous use of Laborers to operate the crane, without documenting such instances. Such practice, even if demonstrated, cannot withstand the specific language of Rule 95.

Thus, the Board finds that the Claimants were denied work to which they should have been assigned. The Board will, however, deny a claim for pay at the punitive rate, in line with many other Second Division awards and in view of the fact that the Claimants were not called upon to perform the work.

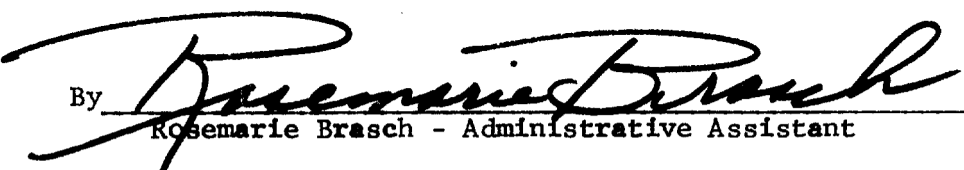
A W A R D

Claim sustained to the extent of payment at straight-time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.