

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award as rendered.

Parties to Dispute: (System of Federation No. 30, Railway Employees'
(Department, A.F.L. - C.I.O.
((Electrical Workers)
(
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

That the Baltimore and Ohio Railroad Company violated the ten (10) day minimum guarantee provisions of the Promotional Memorandum when Claimant Helper Electrician William Pallotta was up-graded to journeyman crane status on November 18, 1971, and was subsequently denied the journeyman's rate for the succeeding nine (9) working days.

That accordingly the Carrier be ordered to make Electrician Helper William Pallotta whole with respect to the difference between journeyman crane and helper electrician pay rates for a period of nine (9) consecutive work days commencing with November 19, 1971.

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 waived right of appearance at hearing thereon.

Claimant was an Electrician Helper assigned to Carrier's Glennwood Locomotive Shop at Pittsburgh, Pennsylvania. At the time of the incident involved herein, all but one of the electric crane operators assigned to this facility were on furlough. On November 18, 1971 a large 250 ton wrecking crane was in the shop for repairs requiring the use of two one-hundred ton bridge cranes simultaneously to make a lift. The one electric crane operator on duty and Claimant were assigned to operate the two one-

hundred ton cranes for the repair work; the job took from three to four hours. Claimant was paid the Crane Operator's rate for the entire day, instead of his regular rate.

The claim herein is for payment of the difference between the Crane Operator's rate and the Helper rate for nine days subsequent to November 18, 1971, based on the provisions of the Promotional Memorandum dated July 17, 1946. Pertinent portions of that agreement provide as follows:

"In the event it is impossible to employ a sufficient number of mechanics who are qualified under the provisions of the Shop Crafts' Agreement at the point where they are needed, local management will inform the General Superintendent Motive Power and Equipment of the number of mechanics needed and the local committee will inform their respective General Chairmen and the General Chairmen and the General Superintendent Motive Power and Equipment will then agree to promote, first, apprentices, then helpers who have had sufficient experience to enable them to do certain parts of the mechanic's work. They will be permitted to hold such positions and will be paid the mechanic's rate of pay until such time as qualified mechanics are available. When qualified mechanics are available they will be permitted to displace, first, promoted helpers, then promoted apprentices.

"It is to be understood that the seniority of such promoted apprentices and helpers will be continued on their respective seniority rosters as apprentices or helpers. They will not establish seniority as mechanics. Apprentices will have prior rights to promotion, and in case of displacement or reduction of force at a shop the promoted helpers will be displaced before any apprentice is demoted.

"Day by day vacancies of less than ten days' duration will not under any circumstances be filled by promoting apprentices or helpers.

"Vacancies of ten days or more duration may be filled by promoting apprentices or helpers. Promoted apprentices or helpers who fill such vacancies must be given at least ten days' pay at the mechanics rate and in reduction of forces, the Shop Craft rules will apply."

The record contains the history of a claim filed by a furloughed Crane Operator contending that he should have been recalled from fur-

lough to operate the crane on November 18, 1971. Carrier agreed with Petitioner and paid that claim. We also note that two other related claims have been held in abeyance by agreement pending the resolution of this dispute.

There is no need to resolve the dispute with respect to whether or not Crane Operators are mechanics, since the clear language of the applicable agreement is controlling. By its own terms, the Promotional Memorandum was developed to provide recourse when it was impossible to employ a sufficient number of mechanics of a craft. In this dispute sufficient qualified crane operators were employed but merely on furloughed status; hence the Promotional Memorandum was not applicable. Furthermore, the Organization cannot have it both ways: if Claimant had no right under the Agreement to operate the crane for three or four hours (and a furloughed crane operator was paid for the work in question) then Claimant was certainly not entitled to be paid for the next nine days as a Crane Operator. There is no support for Petitioner's position in either the rules or in equity.

A W A R D

Claim 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 17th day of April, 1974.