

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13959
Docket No. 13847
08-2-NRAB-00002-070033
07-2-33**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 2.1 and 30.4 when they arbitrarily allowed a junior employee, instead of Carman James Real, to operate the RC75, Mobile Crane at Old Town, Maine.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman James Real in the amount of eight (8) hours at the overtime rate of pay and thirty (30) minutes at the double-time rate of pay for the violation. This is the amount he would have earned had the Carrier not violated the Agreement.”**

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.

This dispute involves the assignment of an employee to work as a Crane Operator on a wrecking crew. It is the position of the Organization that on July 31, 2006, the Carrier violated the Agreement when it used Carman Scribner rather than Claimant to fill that assignment. It argues that Claimant was the first available Assistant Crane Operator on the Wrecking List while Scribner is only qualified as a Groundman and the Carrier cannot "hand pick" an employee to work with the crane after it has mutually agreed upon the Wrecking List which is used for the filling of overtime to work on wrecks, therefore, the claim should be sustained.

It is the Carrier's position that pursuant to Rule 30.2 Wreck Crews are comprised of either two or four Groundmen, as well as one Crane Operator and Cook and there is no position designated as Assistant Crane Operator. According to it, the Crane Operator position is a bid position under the Agreement, whereas the Cook position and Groundmen positions are volunteer positions. It also states that the Wrecking List was produced by the Organization with no input by the Carrier. It concludes by arguing that the selection of a Crane Operator is not based on mere seniority and with no consensus at the time of this incident as to who was best suited for the assignment it had no alternative, but to appoint a qualified man of General Manager Austin's choosing and because of that the claim should be denied.

The Board has reviewed the record and determined that the instant claim is very similar to Second Division Award 13953 involving the same parties and Claimant. As stated in that Award we again have in this case an irreconcilable dispute over whether or not the position of Assistant Crane Operator exists and who was qualified for what positions. Because of that it is impossible to determine whether Claimant should have been called for the Crane Operator position, thus the claim must be denied. The parties should meet and agree to a Wrecking List in accordance with Rules 30.4 and 30.5.

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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 Second Division**

Dated at Chicago, Illinois, this 23rd day of October 2008.