

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that A. S. Parsons, Work Equipment Operator, be paid the difference between what he received as a dragline helper at the rate of \$93.66 per month and what he would have received as a clamshell operator at the rate of \$155.20 per month, from June 7 to 15, 1940.

EMPLOYEES' STATEMENT OF FACTS: During the period June 7 to 15, 1940, A. S. Parsons was employed as a dragline helper at Traer, Kansas, and was paid at the schedule rate of \$93.66 per month. Service requirements necessitated the storing of coal at Lincoln, Nebraska, and this work was begun on June 7, 1940. Three employees junior in service to A. S. Parsons were used as clamshell operators; namely, J. M. Hoenshell, J. W. Ekberg, and F. C. Lippold. The seniority status of these employees as equipment operators as shown on the seniority roster posted in May 1940, is as follows:

No.	Name	Date
16	A. Parsons	6-16-26
17	J. M. Hoenshell	11- 1-27
21	J. W. Ekburg	6- 1-35
22	F. C. Lippold	6- 7-35

Traer, Kansas, the point where A. S. Parsons was employed as a dragline helper from June 7 to 15, 1940, is located on the McCook Division of the Burlington Railroad. It would have been possible for Mr. Parsons to have left Traer, Kansas, on Train No. 190 after the completion of his day's work at 5:09 P. M. and arrive at Oxford, Nebraska, at 8:10 P. M., where he could have boarded Train No. 6 at 2:48 A. M. and arrived at Lincoln, Nebraska, at 6:50 A. M., in time to report for work without loss of time. (Reference: Time Tables No. 75 and No. 1 Burlington Route.)

Rule 27 of the agreement between the Chicago, Burlington & Quincy Railroad and the Brotherhood of Maintenance of Way Employees, effective June 1, 1938, provides as follows:

"New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining except that the senior unassigned available employees in the seniority district will be given preference."

POSITION OF EMPLOYEES: Rule 27 of the current agreement quoted in the Employees' Statement of Facts provides that new positions or vacancies of less than thirty days duration need not be bulletined. The rule how-

would require the senior employe to be used on new positions or vacancies which were temporary. The parties to the agreement, in recognition of the practical aspects pertaining to the filling of temporary positions and vacancies, therefore, agreed that the senior **unassigned, available** employe would be given **preference**. It must be apparent that the claimant was regularly assigned and was not available at Lincoln, but that the employes who were used to operate the clamshell at Lincoln temporarily were the senior unassigned employes available on the respective dates on which used. In view of these circumstances the claim should be denied.

OPINION OF BOARD: Claimant predicates this claim upon Rule 27 of the Agreement between the parties, which provides: "New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining except that senior unassigned available employes in the seniority district will be given preference."

The facts disclose that claimant was assigned and regularly working as a dragline helper. However, claimant contends that if he were not assigned as a machine equipment operator, the class to which the work here involved belonged and a class in which claimant held rights, he was unassigned within the meaning of Rule 27. We are unable to agree with this contention. The work to which claimant was assigned was work covered by the agreement between the parties. Rule 27 places no limitation upon the type or kind of assignment necessary, it simply provides that if unassigned the senior available employe will be given preference. Claimant was not "unassigned" but was assigned to regular work covered by the agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 record does not disclose a violation of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.