

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the Agreement on February 10, 11, 12, and 13, 1953, when Mr. D. W. True was laid off from his regular assigned position and then required to perform services not contemplated in his regularly assigned position as Work Equipment Operator on Crane W-3305;

(2) Account of the violation referred to above, Work Equipment Operator D. W. True now be allowed an additional eight (8) hours straight time pay for each of the days referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Work equipment Operators bid for and are assigned to the operation of specific items of equipment on this particular property. The Claimant, Mr. D. W. True, bid for the position of Work Equipment Operator on Crane W-3305 and was awarded said position on July 12, 1950, by virtue of Bid No. 38. "While so assigned, and if available, no other employe is required or permitted to operate Crane W-3305. This system of operation has been in effect for many years and has proven satisfactory to both parties. For the Carrier, it permits individual responsibility for the condition and operation of an expensive piece of equipment. For the employe it has served to prevent other employes from operating a piece of equipment which is under his care." (See Carrier's Statement of Position in Docket MW-5217).

The system of operation referred to above has, by established past practice, also contemplated that when an item of work equipment is sent to the repair shop for minor repairs, adjustments, and inspection, the position of operator on that piece of equipment will not be abolished, but the operator will accompany the machine to the shops and assist the repairmen, particularly by pointing out the operational features which his experience with the machine indicates particular attention is required as to repair, adjustments and/or inspection.

However, when an item of work equipment is sent to the shops for major repairs and/or overhauling, the position of operator on such machine is abolished, and the operator does not accompany the machine to the repair

course. However, in so doing they violated the provisions of Rule 40." (Emphasis added.)

Obviously, the Petitioner is implying that the Carrier could only have this crane operated by a licensed operator when they say that this, "work performed by the claimant could only be done in overtime . . .". This is a fallacy. The operator need not be licensed. The very wording of the Agreement defeats such an implication. This is supported by the last paragraph of SPECIAL RULES FOR WORK EQUIPMENT OPERATORS IN ENGINEERING DEPARTMENT SERVICE, last paragraph reading:

"The term 'Work Equipment Operator' shall be construed to refer to operators of cranes, derrick cars, pile drivers, ditchers and other equipment customarily operated by such employes, or equipment of other classes to the extent that operation thereof by licensed operators is required by statute or other requirements of public authorities." (Emphasis added.)

No license is required in the State of New Hampshire to operate a crane. The Carrier is not compelled to use a licensed man to test or operate a crane, where the statute does not provide for such requirement. However, the Carrier can assign any qualified man to test or operate a crane in the State of New Hampshire. If claimant was not available, would have been permissive to use unlicensed man anyway.

Therefore, when the Petitioner argues that this work could only be performed during overtime hours, the foregoing defeats such argument.

Consequently, I cannot see how the Petitioner can possibly cite any rule in support of their claim.

The claim should be denied.

All data and arguments herein contained have been presented to the Petitioner in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when Carrier used a Works Equipment Operator for work on an item of machinery other than the machine to which he had been assigned. These operators are assigned to specific items of equipment. Our Awards 5346 and 5954 passed on this question.

Claimant was assigned to Crane W-3305 on the dates under consideration in this claim. This crane had been sent to Concord Shops for repair and in accordance with the usual practice Claimant accompanied it. Crane W-3346 was also in this shop undergoing repairs. The operator's job on this last designated crane had been abolished as it was undergoing major repairs, however, repairs had been completed. At the time Claimant was at the shop with Crane W-3305 he was asked to operate Crane W-3346 to test it which work he performed several times.

Rule 40 is cited by Petitioners in support of the claim which provides in part:

"Employes will not be laid off for the purpose of absorbing overtime."

and it is contended that if Claimant had not been laid off of his regular assigned position as operator of Crane W-3305 and required to operate Crane W-3346, Claimant or some other Works Equipment Operator, would have been assigned to operate Crane W-3346 during overtime hours.

Respondent Carrier contends Rule 40 does not apply as Claimant worked on the dates in question and therefore was not in laid-off status. That by

reason of this fact no overtime is involved in this claim, and cited in support of this position are Awards 5727, 5820, 5967 and 6673.

On behalf of Petitioners' position the record in Docket MW-5217, involving these same parties and in which it is contended Carrier took an entirely different position from that presented in this claim; this Carrier denies.

Petitioners contend in the instant case, Claimant bid in and was assigned to operate Crane W-3305, and under the circumstances, Carrier violated the Agreement by requiring him to operate a crane other than the one to which he was regularly assigned, and which should have been operated by the specific employe assigned to Crane W-3346. Cited are Award 5954 and other awards of this Division. Also it is alleged Claimant held no seniority on Crane W-3346 therefore the intent of the Agreement was violated, Award 4131. That Carrier should have allowed past practice of anticipating completion of necessary repairs, and accordingly bulletined a position covering operation of Crane W-3346. That an employe should have been utilized instead of Claimant on this crane in accordance with past practice and in accordance therewith the Claimant should be compensated, citing Awards 1646, 5186 and 5195.

We do not believe Rule 40 is controlling as its application to the situation here appears to be extremely doubtful. Past practice as urged by Petitioners appears to be in point on cranes entering the repair shop for minor repairs. However, here we are dealing with major repairs as this was the situation or status of Crane W-3346 at the time in question. Major repair work cannot be considered to come within the purview of the Agreement or of past practice as under these conditions the work performed on Crane W-3346 while the same was out of service was mechanical and until this crane was placed back in service the contentions of Petitioners do not apply. Relative to the claim for compensation Claimant was paid for each day while he was in the shop with Crane W-3305 which was undergoing minor repairs.

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

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 there was no violation of the Agreement.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.