Award No. 7398
Docket No. MW-7105

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (1) The Carrier violated the effective Agreement on January 29, 1953, and on dates subsequent thereto, when they assigned a work equipment operator to perform the usual and customary duties of a roadway machine operator in the operation of air compressors at Yard 9, Boston, Massachusetts;

(2) The employes holding seniority as Roadway Machine Operators on the seniority district where the work was performed be paid at their respective straight-time rates of pay for an equal proportionate share of the total man-hours consumed by the work equipment operator in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Because of the failure of the air compressing facilities supplying air to the roundhouse located at Yard 5, Boston, Massachusetts, the Carrier utilized two roadway air compressors, located in Yard 9, on a twenty-four hour basis to maintain the required air pressure for its roundhouse operations.

On January 29, 1953, and on dates subsequent thereto, the operation of the above referred to air compressors on one of the two twelve-hour shifts was assigned to and performed by an employe holding seniority as a work equipment operator. On the other of the two shifts, the work was assigned to and performed by a roadway machine operator.

Air compressors are among the roadway machines that are usually and customarily operated by the employes holding seniority as roadway machine operators.

Work equipment operators and roadway machine operators are separate and distinct classes of employes and are listed on separate seniority rosters.

Accordingly, a claim was filed in behalf of the employes holding seniority as roadway machine operators because of this improper work assignment.

Claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated May 15, 1942, together with supplements, amendments, and interpretations thereto, are by reference made a part of this Statement of Facts.

course, this would not prevent such being done by proper negotiation and agreement."

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

Harry H. Cameron
General Chairman

Approved:
T. C. Carroll
President
bkm

CARRIER'S OPENING STATEMENT: Without access to Petitioner's submission, Carrier offers the following—reserving its rights to reply more fully upon reecipt of Petitioner's ex parte submission.

CARRIER'S STATEMENT OF FACTS: Carrier used Work Equipment Operators to operate air compressors as stated in claim above.

POSITION OF CARRIER: There is nothing in the Agreement that gives Roadway Machine Operators exclusive right in the operation of air compressors. Work Equipment Operators were used per direction of Supervision. These Work Equipment Operators have just as much right to the work of Roadway Machine Operators, as there is nothing in the Agreement to state otherwise.

Many awards from the Third Division have said that the Board only interprets the rules—it cannot rewrite them. Therefore, in the instant case just that would be done if the Employes' position were sustained. The claim should be denied.

Further, the Petitioner (in part 2 of claim) is making claim for Employes adversely affected. Certainly, the burden is upon the Petitioner to be specific as to just who is a claimant—presenting names, etc. Not being specific, nor presenting proper claim—this claim is merely to have your Honorable Board rule on just one issue only—and that is:

> Who should operate air compressors on the Boston and Maine Railroad—Work Equipment Operators and/or Roadway Machine Operators?

If the Board's jurisdiction is only to interpret the rules, then the issue must be the exclusive prerogative of the Carrier. Therefore, the Carrier, without any rule whatsoever in the Agreemnt to direct them, elected to use Work Equipment Operators.

Certainly, no violation exists. The claim should be denied.

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

OPINION OF BOARD: This claim presents the question whether the Carrier properly assigned a Work Equipment Operator instead of Claimants, who are Roadway Machine Operators, to operate an air compressor.

The Agreement (Rules 1, 3-A and 9) puts Work Equipment Operators and Roadway Machine Operators in separate seniority districts; they are carried on separate seniority rosters; and both of these groups of employes have established seniority in their respective classes.

First. While the Agreement does not specifically give Roadway Machine Operators the exclusive right to operate air compressors, such has been the uniform and established practice under the Agreement.

Second. The temporary assignment made by the Carrier cannot be justified under the so-called "Alternate Service Privilege Rule" (Memorandum Agreement effective May 15, 1942).

It is established by the record that the Carrier did not rely on this Rule in assigning the Work Equipment Operator to perform the work under claim. Nor did the Carirer perform the conditions under which the Rule may be invoked. The Work Equipment Operator did not request the assignment. He was not compensated at the Roadway Machine Operator's rate while working on the air compressor. There is no evidence that his own equipment was not operating and no evidence that the consent of the Division Engineer was secured.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1956.