

Award No. 10227

Docket No. MW-9138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ATLANTA AND SAINT ANDREWS BAY RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it assigned Mr. Roland A. Barnes to the position of Dragline Operator, bulletined on June 19, 1956, instead of Mr. W. L. Walden, the senior bidder;

(2) Mr. W. L. Walden be assigned to the position of Dragline Operator because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. W. L. Walden, has established and holds seniority as a Bulldozer Operator in the Maintenance of Way Department as of September 17, 1948, whereas Mr. Roland A. Barnes has established and holds seniority as a Truck Driver as of September 3, 1954; as Assistant Matisa (tamping machine) Operator as of May 3, 1955; and as a Matisa Operator as of October 20, 1955.

On June 1, 1956, the Carrier placed in service a newly acquired dragline machine, thereby creating the position of dragline operator as of that date.

In a letter dated June 13, 1956, the undersigned General Chairman requested the Carrier to bulletin the above referred-to dragline operator's position in accordance with the Agreement rules.

Accordingly, the Carrier issued the following bulletin:

**"ATLANTA & SAINT ANDREWS BAY RAILWAY COMPANY
Maintenance Department
Dothan, Alabama
June 19, 1956**

BULLETIN

"Effective immediately, the position of drag line operator is created.

by Mr. Walden was not properly accomplished. On several occasions, I have found Mr. Walden to be absent from the operator's controls of his machine at times when he should have been actively operating the machine. I have observed the results of his work performed both under supervision and that performed when he was operating the machine at a location where there was no supervision and find that the work performed without supervision was very definitely inferior to that performed while directly supervised.

During the spring of 1956, we received a new LS 22 dragline and the operator of the old dragline which we had at that time was assigned to this machine. Mr. Roland A. Barnes was then assigned to the old drag line after this position had been properly bulletined.

The work scheduled for the old machine, to which Mr. Barnes is assigned, necessitated this machine being operated independently of the main gang and at locations where it would not be feasible to provide supervision, also there is quite a difference between the operation of a bulldozer and a dragline, when the bulldozer is idle only the one machine and one man would be involved in most instances, whereas when the drag line is idle not only the dragline itself but the trucks engaged in hauling dirt loaded by this machine and these operators too would be idle at the time. As Mr. Walden has not shown the necessary aptitude to properly operate the machines to which he has been assigned, except under direct supervision, we contend that he did not merit the assignment to the dragline operator.

Article IV of the current agreement between the maintenance of way employes and Atlanta & Saint Andrews Bay Railway Company, under which the maintenance of way employes base their claim, definitely was not violated as these two positions (dragline operator and bulldozer operator) carry the same rate of pay. Also Mr. Walden has neither shown the merit or ability to properly perform duties of machine operator except when directly supervised.

Webster's collegiate dictionary, Fifth Edition, dated 1947, defines merit as follows: "Due reward or punishment; usually, reward deserved; a mark or token of excellence, or approbation. 2. Quality, state, or fact of deserving well or ill; desert; as, each according to his merit. 3. Worth, excellence. 4. That which is counted to one as a cause or reason of deserving well; a praiseworthy quality, act, etc. To earn by service or performance; deserve."

Mr. Walden has not indicated by service or performance that he deserves either this assignment on merit or ability award, and it would, therefore, not be to the best interests of either Mr. Walden or to this company that he be assigned to the position in question.

OPINION OF BOARD: Carriers' submissions to the Board are not presented in the customary form. The Board accepts the statement of the Assistant to the Vice President as the formal submission of the Carrier insofar as it refers to those issues discussed by the Carrier on the property. Carriers' exhibits 1, 2 and 3 constitute new evidence not made a part of the dispute during the handling on the property. They are not properly before the Board.

Article II of the effective Agreement provides in part:

"The entire system shall constitute one seniority district, and the Maintenance of Way Department shall be one seniority group."

Both Claimant and Mr. Roland A. Barnes held seniority in the Maintenance of Way Department. Claimant held seniority as a Bulldozer Operator as of September 17, 1948. Mr. Barnes held seniority as a Truck Driver as of September 3, 1954; Assistant Matisa Operator as of May 3, 1955; and Matisa Operator as of October 20, 1955.

Carrier purchased a new dragline machine. The operator of the old dragline was assigned to the new machine. After having properly bulletined the position, Mr. Barnes was assigned to the old dragline machine.

Carrier contends that Claimant did not merit the assignment. Carrier relies on Article IV of the effective Agreement which reads:

"Promotions shall be based on ability, merit and seniority; merit and ability being sufficient, seniority shall prevail, the management to be the judge. Employees promoted will hold and continue to accumulate seniority in the rank from which promoted. This rule applies to new positions and vacancies and a promotion is an advancement from a lower rank to a higher rank."

The Organization relies on Article VI of the effective Agreement which reads:

"When new positions are created or vacancies occur they will be advertised by bulletin placed on tool houses and camp cars for five (5) days during which time employees desiring the position may make application as herein provided and the senior man in the class making application therefore in writing addressed to the Chief Engineer will be assigned, otherwise Article IV will apply." (Emphasis ours.)

The rates of pay of the three machine operators, namely Dragline Operator, Matisa Operator and Bulldozer Operator are the same.

We hold Article IV inapplicable. Claimant had seniority. When he made application in writing addressed to the Chief Engineer, he should have been assigned the position of Dragline Operator in accord with the clear and literal language of Article VI.

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 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 6th day of December, 1961.