

Award No. 13521  
Docket No. MW-13520

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Kieran P. O'Gallagher, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
THE DELAWARE AND HUDSON RAILROAD CORP.**

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

(1) The Carrier violated the Agreement when it failed to call Bulldozer Operator David Cortese to perform work on Sunday, September 11, and Monday, September 12, **1960**.

(2) The Carrier now allow Mr. Cortese the exact amount of wages lost as a result **of** the violation referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** At approximately **9:30** A.M., Sunday, September 11, 1960, Crane Operator Zane Raudibaugh was called **to** transport a bulldozer from Oneonta, New York, to Forest City, Pennsylvania, and to operate same in assisting clearing up after a wreck at Forest City. Both Mr. Raudibaugh and Mr. Cortese have seniority dates as Bulldozer Operator. However, Mr. **Raudibaugh** was awarded a position of Crane Operator on November 26, 1958. and has been continued in service as such since that date.

Mr. Cortese had not, as of September 11, 1960, been awarded a position other than that of Bulldozer Operator.

The Agreement in effect between the two parties to this dispute **dated** November 15, 1943, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of **Facts**.

**POSITION OF EMPLOYEES:** The pertinent provisions of Rules 1, 2 and 3 read:

"RULE 1.

(a) Seniority begins on the date the employe last entered the service in the Maintenance of Way Department:

NOTE: This rule does not apply to furloughed employea who take temporary employment in some other department or outside concern during period of furlough under Rule **10**.

It is the position of the carrier that this claim is entirely without merit. **Had** carrier not **used** the senior employe from the class or craft from which the **employe** was called, it would have **been** liable to a claim from the senior **man, as indicated** by awards herein referred to.

Without waiving its position that this claim is completely without merit and should be denied in its entirety, carrier asserts that should claim **be** sustained, claimant should receive no more than pro rata pay based on the principles enunciated in Award 6978 and awards listed therein that the **penalty** for time not worked **should** be no more **than** pro rata pay.

Claim is not supported by any agreement rule or practice and should be denied.

OPINION OF BOARD: In the instant Claim both the Claimant Mr. Cortese, and the employe used, Mr. Bsudibsugh were **working** as **crane operators** on the day in question. Mr. Raudibaugh was a regularly assigned crane operator and had been accumulating seniority as **such** since November 26, 1968. He was also qualified as a bulldozer operator, and accumulating service in that capacity since April 13, 1963. The Claimant, Mr. Cortese, was temporarily assigned as a crane operator, and he also qualified as a **bulldozer** operator and had **been** accumulating seniority **as** such **since** January 13, 1960.

It is the contention of the Organization that Claimant Cortese had no **seniority** standing as a crane operator on September 11th or **12th**, 1960 for **the reason he** was working temporarily as a crane operator and that when the emergency arose which necessitated the dispatch of a bulldozer to Forest **City**, he **should** revert to his status as a bulldozer operator and had been used instead of Mr. Raudibaugh.

We can find nothing in the record, in the current agreement nor in the awards cited by the Organization to support the contention of the **Claimant**. The claim lacks the merit for a sustaining award and must **be** denied.

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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.