

Award No. 14506
Docket No. MW-13278

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned Machine Operator E. M. Ross to operate two (2) different types of machines (B 22 bulldozer and D-25 dragline) on each work day for the period beginning with March 13, 1961 and continuing up to and including March 31, 1961.

(2) That furloughed machine operator W. H. Ogden be allowed pay at the pro rata machine operator's rate of pay for each day Mr. Ross was assigned as operator of the two machines.

(3) That Mr. E. M. Ross now be paid an additional day's pay for each day he was assigned to operate the two machines.

(4) The Carrier further violated the Agreement when it assigned Machine Operator G. L. Bowers to operate two (2) different types of machines (B-22 bulldozer and D-25 dragline) for the period beginning with February 13, 1961 and continuing up to and including March 10, 1961.

(5) That furloughed machine operator J. C. Ramey be allowed pay at the pro rata machine operator's rate of pay for each day Mr. Bowers was assigned as operator of the two machines.

(6) That Mr. G. L. Bowers now be paid an additional day's pay for each day he was assigned to operate the two machines.

EMPLOYEES' STATEMENT OF FACTS: Under date of February 13, 1961, the Carrier issued the following bulletin:

"BULLETIN No. 184

Denver—February 13, 1961

011.1

As can be seen by the foregoing, there is nothing in the Rule upon which the General Chairman verbally based his position that would support his protest. This grievance was permitted to expire under Time Limit on Claims Rule, Article V of the August 21, 1954 National Agreement, and constitutes a final and binding settlement barring the case now being progressed to the Third Division in this Docket.

J. H. McLaughlin bid off the temporary assignment of work equipment operator covered by File MW-9-61. G. L. Bowers was assigned temporarily pending bulletin from February 13, 1961. Bulletin No. 184 advertising position of Work Equipment Operator on the B-22 and D-25 was issued February 13 and expired on February 23, 1961. Bulletin No. 187 of February 27 assigned E. M. Ross to position. Bowers continued to work the assignment on an extra basis until Ross reported for the assignment on March 13, 1961.

As can be seen from the foregoing paragraph, the claim of G. L. Bowers from February 13, 1961, through March 10, 1961, represented by Items 4, 5 and 6 of Statement of Claim, is identical to and a continuation of the claim of J. H. McLaughlin (MW-9-61) which is barred under time limit on claims and grievances.

When machine operator E. M. Ross was assigned to position of machine operator on the B-22 and D-25 as advertised in Bulletin No. 184 from March 13, 1961, through March 31, 1961, represented by Items 1, 2 and 3 of Statement of Claim, this was simply a monetary claim identical to grievance (MW-4-61) protesting Circular No. 184 and is barred when the grievance was allowed to expire on time limit on claims and grievances.

OPINION OF BOARD: On each day from February 13 through March 10, 1961 Machine Operator G. L. Bowers was assigned to operate a B-22 bulldozer and a D-25 dragline. From March 18 through March 31, 1961 these same pieces of equipment were operated concurrently by Machine Operator Ross.

The Organization filed the instant claim alleging that Dragline Engineers and Bulldozer Operators are separate classifications with separate daily rates of pay, that they cannot be combined to be handled by one employee, and that by so doing the Carrier violated the parties' Agreement and should be ordered to compensate the Claimants for earnings thus denied them.

The Carrier contends that this claim had been the subject of an earlier grievance which was abandoned by the Organization and precludes pursuing of the instant claim. Alternatively, it avers that the assignment of one employee to two different positions during one eight hour period is authorized by the agreement, and has been the past practice without protest from the Organization. Accordingly it asserts that the claim must be denied.

On the question of whether another claim filed by the Organization and abandoned on appeal is dispositive of the instant issue, we find this claim to be suitable for consideration under the terms of Article V, 1 (b) of the August 21, 1954 Agreement, which states that failure to take an appeal from a disallowed claim.

“* * * shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances.”

Here we have a claim with differences in the personnel, the dates, and

some circumstances which is similar to, but not the same as, the one earlier abandoned.

Turning to the question of the assignment to work on two machines during one eight hour day, we find that the Organizations' claim lacks merit. The Organization has not shown that any provision of the parties' agreement prohibits such action (Award 10950). Indeed, such assignment as herein protested involving two positions of equal pay rates, in the same seniority grouping, and filled by an employe who apparently qualifies to operate each of the machines appears to be consonant with the terms of Rule 18 thereof, which permits composite service. The Organization's reliance upon Award 12135 is not controlling inasmuch as the instant case involves two positions within the same seniority grouping under the terms of Rule 2 of the parties' Agreement.

Accordingly the claim is 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1966.