

**NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION**

Don Hamilton, Referee

**PARTIES TO DISPUTE:****BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TENNESSEE CENTRAL RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement during the period beginning with August 16, 1962 and extending through September 30, 1962 when it compensated regularly assigned Machine Operators Billy R. Phillips, L. J. Green, John R. Williams and Walter Keys at extra gang laborer's rate of pay instead of at Machine Operator's rate of pay.

(2) The Carrier be required to reimburse the four claimants named in Part (1) of this claim for the exact amount of monetary loss suffered as a result of the aforesaid violation.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants are regularly assigned roadway machines operators in the extra gang supervised by Foreman Dallas Lynch. The claimants were temporarily assigned to perform extra gang laborers' work from August 16 through September 30, 1962.

The Carrier arbitrarily reduced the claimants' rates of pay while they were temporarily assigned to the lower rated work. The claimants' positions as roadway machine operators were not abolished and they were not affected by a force reduction during the period covered by this claim.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carriers' highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1942, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** 1. Machines of the type of ditcher, pile driver, welding outfits, etc., have been on the property as far back as memory goes and have been operated during intermittent periods of their use by Maintenance of Way employees holding assignment as operator thereof. Such machine operators concurrently held an assignment in a classification of Maintenance of Way work other than that of machine operator and worked on such other assignment during periods that the machines were not in use. Such men had to protect their assignment on the machine when the machine was used irrespective of whether it was or was not being used in the gang in which they were otherwise employed.

2. A bulldozer was acquired in January 1957, the operator of which is the only employee who does not concurrently hold an assignment in a classification other than that of bulldozer operator.

**OPINION OF BOARD:** This claim was processed on the property as a violation for failure to abolish certain machine operators' positions in accordance with Article III—Advance Notice Requirements, of the National Agreement of June 5, 1962. The entire handling on the property centered around this contention.

When the Organization submitted the claim to this Board, it apparently abandoned the position it had argued on the property. The entire submission to this Board was based on an alleged violation of Rule 33 (a).

The record clearly indicates that the contention which is now presented to this Board, by the Organization, was never handled with the Carrier on the property. The Board has consistently held that where the Organization does not comply with Section 3, First (i) of the Railway Labor Act or with the provisions of Circular No. 1 of the National Railroad Adjustment Board, the claim must be dismissed.

We find that the Organization, in the submission to this Board, does not even mention the rules relied upon and the contentions which were made in respect thereto on the property, but has in effect recast the case completely. Therefore, we must dismiss the claim.

**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.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.