

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it refused to permit Bulldozer Operator Paul C. Melvin to displace a junior bulldozer operator. (System File M-1749.)

(2) Bulldozer Operator Paul C. Melvin be allowed pay at the bulldozer operator's rate of pay for April 25, 26, 27 and 28, 1966, because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Melvin was advised that his regular position as operator of Bulldozer 12065 at Weller, Virginia, would be abolished effective at the close of his assigned work period on Friday, April 22, 1966.

The claimant called the office of Roadmaster Cooke on April 20 and again on April 21, 1966, to determine where he could exercise his seniority and displace a junior employee. On both occasions he was advised that there were no junior employees in that class working. On Friday, April 22, 1966, the claimant called the roadmaster's office again and requested that the roadmaster's clerk call the office of Regional Engineer W. P. Beesley to determine if there was some place on the system that he could exercise his seniority and displace a junior employee. Upon being advised again that there was no place where he could do so, the claimant gave the clerk his telephone number and his address with the request that he be called if anything came up.

On April 28, 1966, the claimant went to Bluefield to apply for unemployment benefits and discovered that there were three (3) junior bulldozer operators working. He immediately protested to the Carrier with the result that he was returned to work on the following day, April 29, 1966.

The Carrier's action in not permitting the claimant to immediately displace a junior employee deprived him of the opportunity to work and receive

pay therefor at the bulldozer operator's rate on each day April 25 through April 28, 1966.

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

The Agreement in effect between the two parties to this dispute dated December 16, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: P. C. Melvin, the Claimant in this case, held regular assignment as a Roadway Machine Operator. Roadway Machine Operators have assigned work weeks of Monday through Friday, rest days Saturday and Sunday. Immediately prior to the incident herein involved Mr. Melvin held assignment as Operator of Bulldozer N&W 12065, a tractor equipped with scraper blade being used in maintenance of way work on Carrier's Pocahontas Division.

Coal miners in the West Virginia coal fields served by the Pocahontas Division went on strike in April, 1966. Account resultant halting of coal transportation, Carrier effected major reductions in forces, including its maintenance of way forces. In connection therewith, Mr. Melvin was notified on Friday, April 15, 1966, that his position as Operator of Bulldozer 12065 would be abolished effective at end of the day's work on Friday, April 22, 1966.

On Wednesday, April 20, 1966, Mr. Melvin called the office of Assistant Trainmaster-Roadmaster at Weller Yard, West Virginia, by telephone and requested information as to name, location, etc., of a junior Roadway Machine Operator holding a position to which he (Melvin) might desire to exercise his seniority displacement rights. He was told that from all indications at the time it appeared that all Roadway Machine Operator positions might be cut off, and he was advised to call again at the end of the week. However, Mr. Melvin did not call again on Friday, April 22, 1966, the day his position was abolished, and nothing further was heard from him until the following Thursday, April 28, 1966.

On Thursday, April 28, 1966, Mr. Melvin visited the Pocahontas Division headquarters offices at Bluefield, West Virginia, for the purpose of registering for unemployment compensation under provisions of the Railroad Retirement Act. While there, he was informed of junior Roadway Machine Operators still working as operators of other bulldozer machines. He then exercised his seniority displacement rights and worked as Bulldozer Operator on Friday, April 29, 1966.

Employee then filed with Carrier's Roadmaster at Weller, Virginia, claim in favor of Mr. Melvin reading as follows:

"* * * claim for time at bulldozer operator's rate of pay for Paul C. Melvin for April 25, 26, 27 and 28, 1966."

Carrier declined the claim.

OPINION OF BOARD: Effective Friday, 22 April, 1966, Claimant, a bulldozer operator, was cut off in a force reduction. On Thursday, 28 April, 1966, upon reporting to register for unemployment compensation, Claimant was

advised that there were three junior bulldozer operators working and he exercised displacement rights on Friday, 29 April, 1966.

The claim is for 25, 26, 27 and 28 April, 1966, and the center of controversy is whether Claimant's failure to exercise displacement rights earlier was a result of his own inaction or misinformation supplied by the Carrier.

It appears from the record that on Wednesday, 20 April, 1966, Claimant contacted the Roadmaster's Office seeking information as to where he might make a displacement. What happened on that date is in dispute. The Petitioner contends that Claimant was advised he did not have a displacement, whereas Carrier states that Claimant was advised to call back on Friday, 22 April, 1966, but did not do so and nothing further was heard from him until Thursday, 28 April, 1966.

The Petitioner contends that this defense of the Carrier was not raised on the property and cannot be considered, while Carrier states that the matter was discussed in conference. Based on the record here, and particularly the correspondence exchanged in handling the claim on the property, we have no way of knowing what was or was not discussed in conference. However, we do find that in a letter dated 3 May, 1966, the General Chairman, in presenting the claim to the Roadmaster, stated that Claimant "called your office seeking information as to whether or not he had anywhere to make a displacement. He was advised he did not." Nowhere in the Roadmaster's letter of disallowance or in letters of disallowance by subsequent Carrier officers, including the disallowance by Carrier's highest officer following conference, do we find Carrier challenging or denying the General Chairman's statement. Accordingly, we find the claim is meritorious and will be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.

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