

Award No. 17084
Docket No. MW-17762

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, on June 29 and July 1, 4, 5, 6, 7, 1966, it required the section crew at Hazlehurst, Mississippi to operate an on-track mowing machine without a Head Operator. (System case No. 432/L-55-M-66.)

(2) Section Laborer Joe Goodwin now be allowed the difference between what he should have been paid at the head operator's rate and what he was paid at the section laborer's rate for each of the dates specified in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned as a section laborer on the section crew headquartered at Hazlehurst, Mississippi. Prior to the period here involved, he made application in writing, on the prescribed form, to his Division Engineer, with a copy to the Supervisor of Track and to the Local Chairman, for consideration for assignment as operator of various Group 4 machines, including on-track mowing machines, per Rule 21(e) (1).

The Carrier assigned an on-track mowing machine to the Hazlehurst section crew for use in cutting weeds on its assigned territory. On June 29, July 1, 5, 6 and 7, 1966, several members of the crew, under the supervision of the section foreman, were assigned and used to operate the mowing machine over said territory. Instead of assigning the claimant as head operator of the machine and compensating him at the head operator's rate of pay, the Carrier operated the machine without a head operator. Each of the laborers who were assigned and used to operate the machine, including the claimant, were compensated at the section laborer's rate of pay.

The claimant was available, willing and fully qualified to perform the head operator's work but was not permitted to do so.

been shown to be erroneous; however, head operator's duties have always included many supervisory responsibilities, none of which were performed by claimant.

The union is also attempting to convince the Board that it was the intent of the parties from the beginning to pay one man in a gang the head on-track mower operator's rate, regardless of the circumstances involved. This has also been shown to be erroneous. The parties instead agreed that only if it became necessary to use a craft employe to supervise, would he be entitled to the head operator's rate. A section foreman was available in this case; thus, the section laborer was not needed to act as head operator.

The union's position is attempting to convince the Board that assignment of a section foreman in this instance was designed to defeat or circumvent the rules. This is not true. The parties did not agree to eliminate section foremen in mowing operation; therefore, there has been no violation of the rules. The parties concurred in the practice of using a section foreman as head operator even after the Board remanded a similar dispute for settlement; thus, there has been no violation of the rules.

Finally, even if a laborer was needed to serve as a head operator, the claimant would not have been assigned. The union has presented this claim before the Board without having taken the time to name a proper claimant. Instead, they are attempting to convince this Board that a proper claimant is not essential in the instant dispute. Nothing could be farther from the truth. Management has submitted evidence of probative value proving that the claimant named is not eligible to operate the machine in question.

(Exhibits not reproduced.)

OPINION OF BOARD: Before considering the merits of this claim, we should first establish whether this Claimant had fulfilled his obligations to be considered for assignment as Head Operator. This obligation is found in Rule 21 (e) (1) which states:

"(e) (1) Laborers under the jurisdiction of each Supervisor of Track desiring to be considered for assignment as Operators of machines listed in Group 4 of the Track Sub-Department of Rule 2 (B) shall make application in writing to their Division Engineer with copy to the Supervisor of Track and Local Chairman on form furnished. Failure to have such form on file with the Division Engineer 5 days prior to assignment will void any right to assignment to such position."

The record shows that on June 29, 1964, Claimant did fill out the application form for consideration as operator of machines in Group 4 of Rule 2 (B). Claimant apparently checked 10 assignments on this form, but two of these 10 were scratched out. One of those deleted was for "On Track Mowing Machine" which is the question we consider here.

Organization contends that "someone other than the claimant had scratched this out" but no further evidence is offered to substantiate this contention. There was sufficient opportunity for the Claimant to state that he in fact had not deleted his request for assignment as head operator of the on-track mowing machine. But Claimant's statement to this effect nor any other supporting proof was advanced.

Therefore, failing to comply with Rule 21 (e) (1), Claimant cannot now expect this Board to consider the merits of his claim.

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

Claimant failed to comply with Rule 21 (e) (1).

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.