

 Award Number 17979

Docket Number MW-18406

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, 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 it assigned a motor car operator to perform section laborer's work on Section 21 at Newton, Mississippi, from March 6 through March 22, 1967, instead of calling back Section Laborer Bernard Evans who was furloughed from that section. (System file MI-65-T-67/Case No. 470).
- (2) Section Laborer Bernard Evans be allowed 104 hours' pay at his straight time rate because of the violation referred to within Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Due to a force reduction, the claimant's regularly assigned track laborer's position on Section 21 at Newton, Mississippi, had been abolished. There were no junior track laborers on that supervisor's district whom he could displace and, therefore, during the period involved here, he was a furloughed track laborer.

Some time prior thereto, Section Laborer H. L. Evans, regularly assigned to Section 28 at Clinton, Mississippi, had made application for and had been assigned to a motor car operator's position. The duties of the position consisted of operating the track supervisor's motor car and, when not thus engaged, performing janitorial work at the office.

Beginning on March 6 and continuing through March 22, 1967, the Carrier assigned Motor Car Operator H. L. Evans to perform track laborer's work on Section 21 instead of calling back the claimant who was furloughed from that section.

The motor car operator's position was subsequently abolished and Mr. H. L. Evans returned to his former track laborer's position on section 28 at Clinton, Mississippi.

The claimant was available and would have willingly performed this track laborer's work if the Carrier had given him the opportunity to do so.

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 September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** Section Laborer B. E. Evans was furloughed on March 3. There were no employees junior to him on the supervisor's territory and he could not displace.

The motor car operator, H. L. Evans, has a seniority date as section laborer of January 18, 1946, which gives him twenty years more seniority than claimant. (Company's Exhibits A and B) He is listed on the seniority roster of section laborers in Track Sub-Department in Gang No. 28, located at Clinton, Mississippi. When Mr. H. L. Evans was not needed to drive the motor car, he was used in Section Gang 28. Contrary to the union's unsupported claim, Section Gang 28 did not work in the territory of Section Gang 21. On five or six of the claim dates, H. L. Evans was driving a truck. The position of motor car operator was abolished effective March 20, 1967, and from that date he has been paid at section laborer's rate.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant, a Section Laborer, Section 21, Newton, Mississippi was furloughed on March 3, 1967, because of reduction in force. He was the junior Section Laborer in that Section; consequently, he had no seniority right to displace another Section Laborer on Section 21.

Claimant, on February 26, 1968, was recalled to work on Section 21.

The Claim is that: (1) H. L. Evans, a Motor Car Operator on Section 28, Clinton, Mississippi, worked as a Section Laborer on Section 21 from March 6 through March 22, 1967, while Claimant was on reduction in force furlough; (2) Claimant had seniority rights as a Section Laborer on Section 21, over and above those of H. L. Evans, notwithstanding that H. L. Evans had accumulated approximately, more than 20 years seniority as a Section Laborer than had Claimant (Rule 6); (3) H. L. Evans seniority, as of the time here involved, was primarily confined to Section No. 28; (4) a Motor Car Operator is in a classification distinct from a Section Laborer.

Rule 2 SUB-DEPARTMENTS reads in material part:

#### "SUB-DEPARTMENTS

"RULE 2. (A) Seniority rights of all employees are confined to the sub-departments in which employed except Group 1, Roadway Machine Department. Sub-departments are defined as follows: (Emphasis supplied.)

#### "Group 4

- (a) Tie Adzer (Operator only)
- (b) Power rail anchor applicator (Operator only)
- (c) Bolt tightening machine (Operator only)
- (d) Cribbing machine (Operator only)
- (e) Discing machine (Head Operator)
- (f) Dun-rite gager (Operator only)
- (g) Power track jack (Operator only)
- (h) Rail lifter (Operator only)
- (i) Track liners (Operator only)
- (j) On track mowing machine (Head operator)
- (k) Self-propelled ground roller (Operator only)

- (l) Portable power brush saw (Operator only)
- (m) Tie bed Scarifier (Operator only)
- (n) Spike driver (Operator only)
- (o) Spike pullers (Operator only)
- (p) Spike setter (Operator only)
- (q) Tie creosote spray (Operator only)
- (r) Chemical or oil spray not self-propelled (Head Operator)
- (s) Tie Brush (power) (Operator only)
- (t) Tie puller and inserter (Operator only)
- (u) Tractor and tractor mower (Operator only)

\* \* \* \* \*

It is to be noted that "Motor Car Operator" is not listed in Group 4. An employee assigned to such a position, therefore, continues to be classified as a "Section laborers" listed in Group 1 of Rule 2.

Rule 21(e)(1) prescribes the procedure for a Section Laborer to qualify as a motor car operator; and Rule 21(e)(2), with some qualifications, provides that qualified Motor Car Operators "will be called for Machine Operators' positions in accordance with their seniority as laborer."

Rule 2(g) details a few certain duties which may be performed by an employe operating a motor car.

There is no Rule in the Agreement which distinguishes senioritywise motor car operators from other Section Laborers. They may receive a higher rate of pay while engaged in the operation of a machine (motor car) while so assigned. Cf. Rule 48. COMPOSITE SERVICE.

We are convinced from our study of the record in this case that there is no separate classification for Motor Car Operators and while not actually engaged in such operation they are absolutely classified as Section Laborers; and, this is in conformity with history, tradition and custom Carrier's systemwide. See and Compare Award 11448 involving the parties herein although the merits differ.

Petitioner has adduced no evidence that H. L. Evans did in fact work as a Section Laborer in Section 21 on the Claim dates. Carrier avers he did not. The burden of proof, therefore, was vested in Petitioner. It failed to satisfy it. For this inadequacy alone this Board is required to deny the Claim for lack of proof.

**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

Carrier did not violate the Agreement.