

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19542  
Docket Number MW-19456

Robert M. O'Brien, 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 assigned Storehouse Employee Roscoe Goodwin instead of Hoisting Engineer Robert Dunn to perform hoisting engineer's work in connection with the construction of tracks at the Ford Plant at Lorain, Ohio beginning on December 1, 1969 (System File MW-BVE-70-1).

(2) Hoisting Engineer Robert Dunn be allowed pay at the hoisting engineer's rate for a number of man hours equal to that expended by the storehouse employe in the performance of the work referred to within Part (1) of this claim.

OPINION OF BOARD: On December 1, 1969, Carrier's track forces required the services of a hoisting engineer in connection with track construction work they were performing at the Ford Plant, Lorain, Ohio. Instead of using Claimant, who holds seniority as a hoisting engineer, Carrier used Mr. Goodwin, a Store Department employe who holds no seniority within the Maintenance of Way Department to perform the hoisting engineer's work.

It is the Organization's position that the work of track construction is work encompassed within the Scope of the MW Agreement and consequently the operation of any equipment used in the performance of the track construction work properly belongs to employees covered by the MW Agreement. The machine, it contends, was used in connection with MW work and the work of operating same belonged to MW forces.

Carrier admits that the crane in question was operated by the Stores Department Crane Operator, an employe holding seniority under the Clerks' Agreement but raises several defenses to the claim. Carrier contends that no bids were received for positions as Hoisting Engineers; that all employees holding seniority as Crane Operators were working; that Claimant was working elsewhere on the property on the claim dates and could not be spared for the Ford Plant work; that Claimant was off for personal reasons December 21, 1969 through January 1, 1970; and finally that the Store Department employee had been used with his crane to perform MW work at least since December 1, 1946.

It is uncontroverted that the Schedule Agreement herein reserves all work of constructing, maintaining, renewing and removing tracks to the MW Track Department. But does it follow that the operation of a crane used in connection therewith also belongs to employees covered by the MW Agreement? This Board finds that based on the facts herein the work of operating the crane in connection with the track construction work at the Ford Plant should have been assigned to MW forces.

We subscribe to the reasoning enunciated in Award 19038 and followed in Award 19158 that where, as here, we have a machine that could be used by one or more crafts, the character of work performed by the machine would determine the craft from which its operator was drawn. Since track construction work is covered by the MW Scope Rule, we feel it is logical that the operation of a crane in connection with such work also belongs to MW forces and employees thereof should have been assigned to operate the crane.

Nor are we persuaded by Carrier's contention that it received no bids for a hoisting engineer's position bulletined in September. Had it bulletined the position closer to the date the operation began with particular reference to the work location at Lorain, we are not convinced that bids would not have been received. Nor can Carrier contend that Claimants were working elsewhere on the property on the claim dates and were thus not available for the work in question. Numerous awards of this Division have held that where there has been an agreement violation, such as here, compensation is due the claimants. See also Awards No. 4 and No. 5 of the Public Law Board No. 249 involving the same parties herein. Whether Claimant would have been absent December 21, 1969 through January 1, 1970 had he been employed as the crane operator at Lorain is a matter of mere conjecture which cannot be used by Carrier as a defense to the claim herein. We believe the rules relied on by Claimant are clear and unambiguous and support the claim herein, past practice to the contrary notwithstanding. For the above reasons the claim will be allowed.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. H. Hillen  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.