

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19816**
Docket Number MW-19747

C. Robert **Roadley**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The Carrier violated the Agreement when it assigned District Gang Foreman **J. B. Willis** instead of Machine Operator **A. I. Morris** to perform the work of operating a backhoe at Radnor, Tennessee on March 16, 22 and 23, 1971 (System **File 1-25/E-304-11**).

(2) In addition to the pay he has received, Machine Operator **A. I. Morris** be allowed twenty (20) hours of pay at the backhoe operator's rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The dispute is the result of the Carrier assigning a District Gang Foreman to operate a backhoe machine on the claim dates instead of using claimant, a machine operator. The backhoe machine was used in connection with cleaning up and hauling rock, pushing cars, and moving an air compressor. The record shows that the District Gang Foreman is regularly assigned to the position of Foreman under Rank **1**, of the **Agreement**, and claimant is a qualified machine operator under Rank **3**, of the Agreement. Rule **5(a)**, of the Agreement, establishes the Seniority Rank of the employees in the Track Subdepartment and there is no dispute that the Foreman and claimant held the respective Seniority Ranks referred to above.

While it is clear that the portion of the claim dealing **with** cleaning up and hauling of rock is machine operator work, under Rule **5(a)**, Rank No. **3**, of the Agreement, the portion of the claim concerning **the** pushing of cars and moving an air compressor is vague and Lacks Agreement support. we will therefore dismiss that portion of the claim relating to the pushing of cars and moving an air compressor and direct our attention to the remaining portion of the work claimed - the cleaning up and hauling of rock.

The Carrier has contended that since the District Gang Foreman was of a higher rated position he could perform the work of a lower rated position without violating the Agreement and cites, in support of such contention, Rule 42 of the Agreement. Rule 42 (a) (Composite Service) states in pertinent part:

"Except as otherwise provided in Rules 41 and 54, when ~~an~~ employee performs work of a higher class, either within or without the scope of thfr agreement, for 4 hours ~~or~~ more on any day, he will receive the higher rate for the entire day, When Less than 4 hours work is performed in the higher class, the Lower rate will apply for the whole day. In any ~~case~~, where an employee's regular rate is the higher one, his rate will not be reduced when he is required to perform Lower-rated work for any portion of the day. * * *"

Carrier stated, in his submission to this Board, that, under the above quoted Rule, the Foreman can perform lower rated work on the grounds that the Rule "takes into account and provides for ~~employees~~ to perform either higher or lower-rated work." We do not concur in this Carrier position. In the instant case the claimant held seniority in Rank 3 of the track sub-department and the Foreman held seniority in Rank 1 of the same sub-department which is a higher seniority rank. On the claim date the Foreman was not exercising the ~~same~~ seniority as the claimant but was, in fact, assigned to his position as District Gang Foreman because of other seniority and he did not ~~relinquish~~ this ~~assignment~~. Consequently, the Foreman was in the position of ~~performing~~ work of two assignments, each with separate seniority.

We hold that the Composite Service Rule is a pay rule and not an assignment of work rule, as such. The primary purpose of such a rule is to establish the basis of pay for an employee performing higher rated work than his normal assignment or, conversely, when an employee ~~is~~ performing lower rated work than that of his normal ~~assignment~~. As previously stated herein, the cleaning up and hauling of rock is machine operator work under Rule 5(a), Rank No. 3, of the Agreement, ~~and~~ was part of the ~~assignment~~ of the claimant, a Rank No. 3 Machine Operator.

A case in point ~~was~~ the subject of Award 12135, which stated:

"The composite service rule is concerned primarily with the pay for work performed. It does not govern seniority, or the right to work. The primary issue was whether the work ~~****~~ was a part of the assignment of the Claimant. We believe it was, in so far as a determination is necessary between the Claimant and the track-foremen."

Also see Awards 12688 and 15605.

Although it is true that the issue in Award 12135 involved the performance of overtime we do not concur in the Carrier's submission statement that, therefore, it has no relevance. It clearly sets forth the principle reiterated by this Board in numerous disputes insofar as the application of Composite Service Rule, such as at issue here, is concerned.

Based upon a thorough review of the record before us we find that claimant had established seniority in accordance with Rule 6 of the Agreement; and, that his contractual rights were violated when the Carrier assigned an employee of a higher seniority Rank to perform work of claimant's seniority **Rank**. We will sustain the claim insofar **as** the cleaning up and hauling of rock on March 16, 1971 is concerned and dismiss the claim insofar as the pushing of cars and moving an air **compressor** is concerned for the reasons stated herein.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *E. A. Killen*
Executive Secretary

Dated at Chicago, Illinois, this **20th** day of **June 1973**.