

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19921
Docket Number **MW-19952**

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of **Way Employees**

PARTIES TO DISPUTE: (

(Duluth, **Missabe** and Iron Range Railway Company

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

(1) The Carrier violated the **Agreement** when it assigned a B&B **em-
ploye** instead of Bus Driver John Olson to drive a bus used to transport B&B **employees** from Proctor, Minnesota to their work location and return each day on March 24, 25, 26, 29, 30, 31, April 1, 2, 3, 4, 5, 6, 7, 8 and 9, 1971 (System File 14-71).

(2) Bus Driver John Olson be allowed forty-nine (49) hours' pay at the bus driver's time and one-half rate (the number of overtime hours expended by the B&B **employe** assigned to drive the bus) because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Claimant, holding seniority in the Track Subdepartment, as a machine operator, was assigned to the temporary position of bus driver. The position of bus driver was "**cancelled**" effective at the close of work April 1, 1971. Beginning on March 24th and continuing through April 9, 1971 an Assistant B & B foreman was used by the Carrier to operate the bus transporting a B & B crew to and from its work location, approximately 13 miles from its headquarters.

Rule 2 (b) and (c) of the applicable Agreement provide:

"**RULE 2**

Seniority
* * *

(b) Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company as hereinafter provided.

(c) Seniority rights of all employees are limited to the subdepartment in which employed. Subdepartments and groups are listed as follows:

"I--Track Subdepartment

* * *

Group (B) - Classification

1. Equipment Repair Foreman."
2. Power Tool Repairmen.
3. Class B Machine Operators.
4. Class B Assistant Machine Operators.
5. Class C Machine Operators.
6. Class C Assistant Machine Operators.
7. Class D Machine Operators.****

(See rate sheets for classification
of machines.)

II--Bridge and Building Subdepartment

Group (A) - Classification

1. Foremen.
2. Assistant Foreman.
3. Mechanics (including Cabinet-makers, Carpenters, Composite Mechanics, Fire Inspectors and Welders, Fuel and Water Supply Repairmen, Masons Motor Car Repairmen, Ore Dock Repairmen, Scale Inspectors, Painters, Plasterers, Plumbers).
4. Truck Drivers.
5. Helpers.
6. Pumpers.

* * *'

The classification "Bus Driver" appears in the Agreement only on the Rate Sheet - following Class C Machine Operators. There is no such classification in the B & B subdepartment. The Scope Rule in this Agreement is conceded to be general in nature.

The primary argument advanced by Petitioner is that the assignment of a B & B Subdepartment employee to perform work of a character accruing to Track Subdepartment employees was in violation of the Agreement. Carrier argues that there was no rule violation since it had conformed to the Composite Service Rule (Rule 24); that the incumbent assigned to a position does not have the exclusive right to the work of such position; and that the Carrier over the years has used mechanics and others to drive trucks, buses and other vehicles.

We do not agree with the argument raised by Carrier with respect to the Composite Service Rule. That Rule relates to pay and may not properly be construed so as to confer rights to work to higher classified employees. It should not have been used to justify the assignment of work in this case, although appropriate in terms of the pay to the employee used to drive the bus. We have held consistently in many Awards that this rule is concerned primarily with pay for work performed (See Awards 19816, 12135, 12688 and others).

We have searched in vain for a Rule which reserves the work of driving buses exclusively to employees classified as bus drivers in the wage schedule referred to above. Rule 2 and the Supplement were for the purposes of classification and pay, not for the reservation of work. In Award 18876 and a host of other awards we have held repeatedly that: "... classifications of work are not exclusive grants of work to that classification."

Given the general Scope Rule of this Agreement, it would have been necessary for Petitioner to establish a system-wide exclusive past practice, to support its contention that the work in question was reserved to the particular classification. The record is devoid of such evidence and further there was no denial by the Organization of the Carrier's assertion that a contrary practice was prevalent.

For the reasons indicated above the Claim must be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.