

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20090
Docket Number MW-20106

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(1) The Carrier violated the Agreement on November 9, 1971 when it assigned and used a roadway machine operator from the San Antonio Division Seniority District to move machines on the Dallas Division Seniority District (System File MW-72-3).

(2) Dallas Division seniority District Roadway Machine Operator W. E. Allen be allowed eight hours of straight time pay because of the aforesaid violation.

OPINION OF BOARD: On November 9, 1971, a heavy duty truck operated by a Roadway Machine Operator from the San Antonio Division Seniority District was dispatched to Houston to get a set of switch ties needed to replace ties destroyed by a derailment at San Antonio. The truck was diverted enroute to pick up and transport a tamping machine and a track liner from Austin, Texas to Gidding and a tamper from Gidding to Caldwell, Texas. Austin, Gidding and Caldwell are in the Dallas Division Seniority District. The trip was continued to secure switch ties and return to San Antonio. It should be noted that there had been a derailment near Giddings requiring the use of the tamping machine and track liner. Claimant, a Dallas Division Seniority District Roadway Machine Operator, filed the claim herein alleging that he should have been used rather than the driver from the San Antonio Seniority District. The claim is for eight hours pay; however the Carrier alleges that the particular work in the Dallas District only took three hours, which is disputed by Petitioner.

The following rules are particularly relevant to this dispute:

"ARTICLE 2 - SENIORITY RULES

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SECTION 2. (a) Seniority rights of employees to new positions and vacancies are restricted to the territory over which one superintendent has jurisdiction, and New Orleans Terminals, except that system gangs, system roadway machine operators and helpers, and employees in system welding gangs and units may be used on all seniority districts. No transfer

"of employees' seniority from one seniority district to another will be made until an agreement has been reached between the Manager of Personnel and the General Chairman, except as otherwise provided."

"ARTICLE 6 - SENIORITY ROSTERS

SECTION 1. Seniority rosters of employees of each **sub-department** by seniority districts will be separately compiled. Copies will be furnished foremen and the General Chairman and District Chairmen, and be posted in tool houses, outfit cars, camp trailers, and other convenient places available for inspection by employees interested. Seniority roster will show the name of each employee and his seniority date by classes."

"ARTICLE 22 - HEAVY DUTY TRUCKS

SECTION 1. When heavy duty trucks assigned to the Roadway Machine Department are regularly used to transport material, roadway equipment, or to handle material for maintenance of way gangs in performance of their work, such trucks will be operated by Roadway Machine Operators, and the position of Truck Operator will be established and will carry the rate as shown in rate schedule for heavy duty truck."

The principle argument advanced by Carrier in this matter is that the Agreement does not reserve to Roadway Machine Operators the exclusive right to transport machinery and equipment. In support of this position Carrier cites a **number** of Awards including Award No. 21 of Special Board of Adjustment 366 involving the same parties. An examination of that Award, and the others cited, does support Carrier's contention that the Scope Rule of this Agreement and Article 22 Section 1 do not vest exclusivity **in** the work herein in Roadway Machine Operators. However exclusivity is not the issue in this dispute since the work was assigned by Carrier to a Roadway Machine Operator on November 9, 1971 and the question is one of seniority.

Carrier further argues that the claim is without merit since two of the heavy duty trucks **with** assigned operators of the Dallas Division Seniority District were engaged in other work and the third heavy duty truck was in the shop being repaired with its driver being paid, standing by. Further Carrier argues, in its brief, that an emergency situation existed, justifying the use of the available employee and truck. It is noted that Carrier never contended,

on the property, that an emergency situation was involved; hence this argument is without merit. Carrier further argues that the equipment could have been transported just as easily in a heavy duty truck driven by a traveling mechanic or water service employee, neither of whom are covered by the Agreement. We agree; however the driver in this case was covered by the Agreement and the sole issue herein is whether or not the **seniority** provisions of the Agreement were violated by the assignment.

Carrier in its submission stated: "Carrier does not deny that this movement of machinery and equipment from Austin to Giddings would have been performed by Dallas Division Seniority District Heavy Duty Truck Operator if there had been one available, with available truck, however, that was not the case. There was no heavy duty truck available except the one from San Antonio that was used." An **exaggerated** extension of this position might mean that if equipment in Seniority District A were unavailable for any reason, Carrier could move in employees from Seniority District B with their equipment to perform the work, with District A employees standing by. This would clearly be contrary to the provisions on Seniority in the Agreement, and particularly Article 6. In Award 6905, we said:

"It is to be remembered that the subject of the Carrier's contract with its employees is work and not equipment. If the Carrier has equipment and no work and its employees stand idle, no rights accrue to the employees under the contract. If the Carrier has work but not equipment and under those circumstances alone, could contract out its work the last vestige of right which the employees have under the collective bargaining agreement would disappear."

The principle cited above is applicable to the matter before us. In this case Carrier made the decision not to use the equipment in the Dallas Seniority District, which was being used for other work; this decision, however, did not give Carrier the right to use an **employee** from another seniority district to perform the work.

Carrier contends that Claimant was the wrong claimant **and** was fully employed on the day in question. The record is clear that Claimant held seniority as a Roadway Machine Operator and had operated heavy duty trucks. Carrier contends further that the proper claimant would have been the assigned driver whose vehicle was being repaired and was paid although not used on the day in question. We have held on a number of occasions (Awards 6949, 10575 and 18557) that one of a group entitled to perform the work may prosecute a claim even though there may be other employees in a preferred **position**. In this case the crux of the claim is Rule violation with the monetary claim being merely incidental. The work involved herein could have been performed on overtime or Claimant's work schedule could have been rearranged; the availability of another more senior driver, who was on stand-by, does not relieve Carrier of the

violation or penalty arising therefrom. Seniority rights are fundamental to collective bargaining agreements and this Board cannot condone even minor encroachments on those rights.

The claim will be sustained, except that Claimant will be **allowed three** hours of straight **time** pay, rather than eight.

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 in accordance with Opinion.

A W A R D

Claim sustained; Claimant will be allowed three hours at straight time pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.