

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20345  
Docket Number MW-20372

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Texas and Pacific Railway Company)

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

(1) The Carrier violated the Agreement when it refused to permit **Trackman** Driver Ben Rogers to displace a junior **trackman** driver.

(2) The Carrier further violated the Agreement when it failed and refused to allow **Trackman** Driver Ben Rogers holiday pay for Friday, March 31, 1972 (System File K 247-4969).

(3) **Trackman** Driver Ben Rogers be allowed eight (8) hours' holiday pay for Friday, March 31, 1972, **eight** (8) hours' pay at the **trackman** driver's straight time rate for April 3, 1972 and the difference between what he would have been paid at the **trackman** driver's rate and what he has been paid at the **trackman**'s rate beginning a April 4, 1972, because of the violation referred to within Put (1) of this claim.

OPINION OF BOARD: Claimant had been employed at Maringouin prior to bidding a position as **trackman** at Ville Platte. On March 30, 1972, he was notified that he was displaced at Ville Platte by a senior employee. On his next regularly scheduled work day (April 3, 1972), he reported to Maringouin and attempted to displace **Trackman-Driver**, Eaglin. Claimant was advised that he was disqualified as **Trackman-Driver**.

Claimant's seniority ranking is number 121, whereas Eaglin's ranking is number 122.

There is conflict in the record concerning Claimant's job performance at Maringouin prior to bidding to Ville Platte. Claimant insists that he had been employed for two (2) years as a **Trackman-Driver**. Carrier denies that he had ever been so assigned on a regular basis, but concedes that he did perform some relief driving duties during that period of time.

The pertinent Memorandum of Agreement provides:

"In negotiation of the basic agreement rules this date, 'Trackmen-Drivers' have been listed in the Scope Rule.

When a motor vehicle for use on the highways is assigned to a track or section **gang**, one position of **trackman** shall be established as 'Trackman-Driver' and such position shall carry an hourly rate of six cents above the **trackman** rate on the gang.

The establishment ~~of~~ a position of 'Trackman-Driver' on a gang does not preclude other members of the gang from driving the **motor** vehicle assigned to the gang, and Rule 28 of the basic agreement shall not apply.

A trackman to be qualified for assignment to the position of 'Trackman-Driver' must, at his own expense, secure and maintain a commercial vehicle operator's license for the state where the position is headquartered. Upon presentation of the required license to the District Engineer, the letters 'TD' with abbreviation of the state issuing the license will be shown opposite the trackman's name on the seniority roster of trackmen.

Trackmen may not exercise seniority under Rules 3 or 11 to positions of 'Trackmen-Driver' unless they are qualified-per this agreement; on for bulletined positions or to exercise displacement rights, they must show on such application the number of their license and the expiration date of the same." (under-scoring supplied)

Claimant asserts that he has the necessary operator's license; has never been disqualified under the terms of the Agreement; and is senior to Eaglin. Accordingly, he contends that he should have been permitted to displace the junior Trackman-Driver.

In its Submission to this Board, Carrier asserts that possession of an operator's license is not the sole criterion for Trackman-Driver position. It suggests that in some states an applicant need not demonstrate driving ability. ~~Common~~ also refers to a refusal to allow "reckless" drivers to operate its vehicles, and alludes to ability to read and write; etc.

However, on the property the Carrier's refusal to allow the displacement was rather vague and inconclusive. Although it appears that Claimant was "disqualified" on April 3, 1972, the stated reasons appeared to have been an unidentified overexpenditure of time and unreliability when Claimant performed driving duties previously at **Mar-ingouin**.

We do not concur with Carrier's position that possession of an appropriate operator's license is not the sole criterion. Carrier entered into an Agreement which provides for a 6¢ per hour differential for Trackmen-Drivers. That Agreement limits qualification to securing **and maintaining** a license in the appropriate state. We may not write exceptions to a rule when the parties themselves saw fit not to do so. See Award 11668.

We do not, in this Award, preclude Carrier from making an argument, in an appropriate case, that an employee's performance of driving duties has a bearing upon his retention of the right to continue in that position. But such **issue** is not properly before us in this case. Carrier stated a "disqualification" in April, 1972, based on **alleged events at a previous time**. AN pointed out by the **Organization on the property**:

"Your statement that 'claimant had not demonstrated reliability when sent to perform duties away from the gang location,' is a judgment passed by carrier upon the claimant without benefit of a hearing or investigation which is a violation of Rule 12 of the current agreement."

The Board finds that Claimant should have been allowed to displace on April 3, 1972.

Regarding the claim for holiday pay, we note that March 31, 1972 (Good Friday) was a recognized holiday under the Agreement.

The Agreement provides for holiday pay if the employee is compensated for the workdays immediately preceding and following such holiday, or, if the employee is available for service. The Organization contends that Claimant is entitled to holiday pay under either concept.

Because we have found that Claimant should have been allowed to displace on his next regular workday (April 3, 1972), we find that he was entitled to holiday pay for March 31, 1972.

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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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order** of Third Division

ATTEST:

*A. H. Penner*  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July, 1974.