

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20861
Docket Number MN-20924

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Seaboard Coast Line **Railroad** Company

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

(1) The Agreement was violated when the Carrier failed and refused to allow Henry Bowie the Class 3 machine operator's rate of **pay** for all services performed on **February** 26, 27, 28, March 1 and 2, 1973 /System File C-4 H. **Bowie/12-35** (73-3) **E-3/**

(2) The Carrier **now** be required to pay to Claimant Bowie the difference between what he should **have** been paid at the Class 3 machine operator's rate and what he was paid at the **trackman's** rate for 40 hours of **straight-time** work and for 14 hours of overtime work during the period specified in Part **(1)** above.

OPINION OF BOARD: Claimant had a seniority date of October 11, 1948 as a **trackman**. He had established seniority as a track machine operator in the Track Department on July 19, 1962. Prior to February 26, 1973 Claimant was assigned as a trackman.

A position of track machine operator was advertised **from** January 27 through February 6, 1973, and Claimant was the successful bidder. A bulletin was issued by the Carrier on February 9, 1973 awarding the position to Claimant with the assignment to be effective February 26, 1973. Claimant was not permitted to take the assignment effective February 26, 1973, but on instructions of the **Roadmaster** he continued working as a **trackman** February 26 through Friday March **2nd**, during which period he worked forty hours straight time and fourteen hours overtime; he started to work as a track machine operator on March 5th. Petitioner's contention is that he should have been paid for the service February 26 through March 2nd at the machine operator's rate rather than at the **trackman's** rate.

Based on the entire record of this dispute, it is our conclusion that the claim must be sustained. While the rules of the Agreement contain no specific provisions as to when actual assignments to positions are to be effective, in this case the **Carrier**, by its bulletin of February 9, 1973 made the **assignment** effective February 26, 1973. Claimant was entitled to the track machine operator's rate effective that date, and that rate would also be applicable **to any** overtime service (**see** Awards 17618, 18945 and 19458).

The Carrier argues that Claimant was instructed to continue as a **trackman** for the week in question due to an emergency situation in the area caused by storms and a derailment, and Carrier cites awards to the effect that Carriers have latitude in assigning employees to meet emergency situations. We agree with those Awards which spell out Carrier **perogatives** in using employees in emergency situations, but no awards have been **cited** which hold that employees were required to work at a lower rate of pay thm the rate of their assignment in order to meet an emergency. Thus it is our finding that the Claim must be **sustained**.

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.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of **November** 1975.