

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 20964  
Docket Number MW-20801

Dana E. Eischen, 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 on various dates in March and April, 1973 (identified in letter of claim presentation) when it assigned an employe with no seniority in Rank 3 (H. L. Tackett) to operate a Hy-Rail Motor Crane instead of assigning a Rank 3 employe thereto. (System File 1-5/E-364-5)

(2) Mr. S. D. Johnson be allowed pay at the motor crane operator's rate for the overtime hour8 worked on the Hy-Rail Motor Crane by H. L. Tackett between Holton and Jena, Tennessee - a total of 38-1/2 hours.

**OPINION OF BOARD:** Claimant S. D. Johnson holds seniority from September 21, 1971 in a Rank No. 3 Job in the Track Subdepartment. During March-April, 1973 Carrier assigned one H. L. Tackett, who holds a Rank No. 6 position with seniority date of August 24, 1971, to operate a Hi-Rail Crane on the Knoxville Division between Holton and Jena, Tennessee. On May 22, 1973 the instant claim was filed on behalf of Mr. Johnson alleging that Claimant, rather than Mr. Tackett, should have been assigned to the Hi-Rail Crane operation. But Claimant seeks only the overtime hours worked by Tackett, which cumulate to some 38 1/2 hours. Thus, Claimant implicitly suggests that only the overtime assignment of Tackett was violative of the Agreement.

Our review of the record shows that throughout handling on the property and before the Division Carrier stated flatly that Claimant was not qualified and never passed qualification tests or otherwise demonstrated competence to operate the Hi-Rail Motor Crane; The General Chairman asserted that Claimant told him he had operated a Pettibone Crane in the past and "felt sure" he could operate a Hi-Rail Motor Crane. As we have stated on occasions too numerous to recount, bare assertions are not evidence and are insufficient to carry the burden of persuasion when a party is put to his proof on a material contested fact. Carrier has called into question Claimant's qualifications and he has not adequately refuted the determination of Carrier that he was not qualified on the Hi-Rail Motor Crane. Accordingly, we have no choice but to deny the claim for failure of proof.

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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 Employee 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** not violated,

A W A R D

Claim denied.

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

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, **Illinois**, this 27th day Of February 1976.