

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22356**
Docket Number **MW-22133**

Robert A. **Franden**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Seaboard **Coast** Line Railroad Company

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

(1) The Carrier violated the Agreement when, on August 26, 27, September 2, 3, 4, 1975 and **on** dates subsequent thereto, it assigned and used a Track Subdepartment **employee** to fill a temporary machine helper's position (helper - **Gradall** Machine #3, Force No. 9014) in the Maintenance of Way-General Subdepartment instead of recalling and **using** furloughed Machine Helper Dexter **Gaymon** /**System** File 12-8 (76-1)7.

(2) **As** a consequence of the aforesaid violation, Furloughed Machine Helper Dexter **Gaymon** shall be allowed eight (8) hours of pay at the machine helper's straight-time rate for each of the dates specified in Part (1) hereof and for each date subsequent thereto on which a Track Subdepartment **employee** was used to fill the **machine** helper's position on **Gradall** Machine i.3, Force No. 9014."

OPINION OF BOARD: The Organization has alleged that on the claim dates the Carrier violated the Agreement **by** using employees not holding seniority in the general **sub-department** to do work reserved to employees holding seniority in that sub-department, to wit: the work of a helper on a **Gradall** machine. It is further alleged that under Section 2 of **Rule** 8 of the controlling Agreement the claimant as a furloughed Group A Rank 3 Helper should have been called to perform the work.'

The Carrier argues that the work in question is not exclusively reserved to the general sub-department in that the work in question is not Operator or Helper work.

Rule 5 creating seniority groups and ranks reads as follows:

"RULE 5

SENIORITY GROUPS AND RANKS

Section 1

The seniority rights of employees shall be confined to seniority districts as set forth in Rule 4 and to **sub-departments** and groups as shown below. The rank sequence of employees within the various groups shall be as shown below, the **lowest** number designating the highest rank and the highest number the lowest rank in the group.

Track Subdepartment

<u>Group A</u>	<u>Seniority Districts</u>
Rank 1-- Foreman ; Foremen)
Inspectors)
Rank 2--Assistant Foremen)
Rank 3--Apprentice Foremen)
Rank 4--Machine Operators -)
Class I, II and III)
Machines,)
) District, except
NOTE: Employees in Ranks 1, 2) System Rail Gang.
and 3 will not establish) See Rule 6,
seniority in Rank 4 until) Section 5.
such time as assigned to)
a position in this Rank)
as provided in Rule 6,)
Section 6, and the pro-)
visions of Rule 6, Sec)
tion 3, will not apply.)
)
Rank 5--Helpers)
Rank 6--Trackmen)

* * *

Maintenance of Way - General Subdepartment Seniority Districts

Group A--Roadway Machines

Rank 1--Foremen) District.
Rank 2--Machine Operators) See Rule 6,
Rank 3--Fireman; Helpers; Oilers) Section 4.

The following machines or similar machines shall be considered as being in this Group A and shall be filled as provided **in Rule 8**, Section 9: Draglines; Grading Equipment; **Ditchers;** Pile Drivers; Burro Cranes; Jordan **Ditcher** and Spreader; **Fireline** Plows - Crawler Type; Bulldozers; Euclid Earth Movers; Power Shovels; Motor Graders; and **Gradall**.

NOTE: Seniority established **in** this Group A will apply on all machines listed above as well as any machines added to this group **in the future**. It is understood that this does not in any way change the provisions of Rule 6, Section 1."

The Carrier concedes that certain work on the **Gradall** has historically been performed by Helpers. In its letter to the General **Chairman** of September 23, 1975 the Carrier set out that work and included a reference **to** occasionally driving the truck which carried the **Gradall**. We **point** out, however, that the **Gradall** work discussed herein includes moving over the road without a second piece of equipment.

This Board holds fast to its position that where seniority classification rules do not specifically set out the work in question the claimant has the burden of proving that the subject work is exclusively reserved to the claimant's seniority class. In the instant matter, however, we come **down** to a question of **what** constitutes the operation of the **Gradall**. There is no question but that the operation of the machine is work of the general sub-department.

The fact that the **machine** has two operating cabs does not make it less a **Gradall** when being operated from one rather than the other. In either case the operation of the **machine** is reserved to **employees** holding seniority in the general sub-department. We hold that the reasoning of Award 21340 wherein it was determined that the operation of a machine **specifically** listed in a rule such as Rule 5

above by **one** not holding seniority in that sub-department establishes a **prima** facie case is sound and applicable in the instant case.

We will sustain the claim.

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 16th day of March 1979.

