

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22680
Docket Number **MW-22560**

James F. **Scearce**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when **Trackman** George Bolder was used to operate a Class 'A' machine on February 3, 7 and 11, 1977 instead of using Claimant Roger **E. Himes** who holds seniority as a machine operator and who was available to perform such **service** (SystemFile **BALT-W-207/2-MG-1836**).

(2) As a consequence of the aforesaid violation, Claimant **Himes** shall be allowed the difference between a Class 'A' Operator's rate and the **trackman's** rate for twenty-four (24) hours plus three (3) hours at the Class 'A' Machine Operator's time and one-half rate for a total of \$50.73."

OPINION OF BOARD: The dispute in this case centers upon the Carrier's decision to place a **trackman** in the position of a "work equipment operator" on certain dates in February, 1977, such action being grieved by the Claimant herein who was more senior and held seniority as an equipment operator. There is no question that both men were apparently qualified to operate the equipment.

Per the Carrier, its decision to place the less senior **employee** on the equipment - a Tie Shear - was because (1) such equipment would not operate in extreme cold, (2) at that time of the year - February - it could only be determined on short notice if the weather would permit use of the Tie Shear, (3) such conditions meet the "unforeseen nature" contemplated under Rule 53 (d-1), and (4) under such circumstances, the Carrier is entitled to use a qualified operator who is "**immediately** available" - also as set out in Rule 53 (d-1). The Organization contends that the Claimant was available and within a favorable distance to the work.

Rule 53 (d-1) states **that:**

"Where vacancies of an unforeseen nature occur in positions of Work Equipment Operator and where **there** is **no** Work Equipment Operator immediately available to cover such vacancies, the senior employee who can operate the machine may be assigned to cover such vacancy for a period of two (2) days or less. It is understood **that** such employee will be allowed pay at the applicable Work Equipment Operator's rate while filling such position."

The record of handling on the property indicates that the **Claimant** was working as a **trackman** some 30 miles distant from where the machine was to be used, while the **trackman** used **on** the **machine** was working at the site where the Tie Shear was to be used. Arguably, had the decision been made to operate the **equipment** prior to start-up of the crews **on** the dates in question, then the Claimant should have been called. The record does not specify when the decision was made, although the Carrier asserts such work was done during the shifts involved. We find nothing in the record **that** offers support to the Organization's claim; conversely, the actions of the Carrier would appear to be in concert with the provisions of Rule 53 (d-1).

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 not violated.

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Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulose*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.