

NATIONAL RAILROAD ADJUSTMENT BOARD

THIW DIVISION

Award Number 22972
Docket Number w-22912

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

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

(1) The Carrier violated the **Agreement** when it refused to permit Group 14 Machine Operator Leon **Harper** to displace junior Machine **Operator Cebern Scott** on January 12, 1978 **/System File 11-P-589/L-126-1683/**.

(2) As a consequence of the aforesaid violation, the **claimant** shall be allowed the amount of pay he would have received had he been permitted to displace the junior machine operator **on** the Jordan Ditcher beginning January 12, 1978 and continuing until he is permitted to do so."

OPINION OF BOARD: Claimant was an operator of Group 14 equipment - Heavy Work Equipment - having established seniority in that position on February 22, 1974. On January 9, 1978, his position was abolished and on **January 12**, 1978 he attempted to displace a junior Group 14 machine operator, who was assigned to a Jordan Ditcher as assistant operator.

Rule 6(c) of the Agreement Governing Hours of **Service**, Rates of Pay and Working Conditions reads as follows:

"(c) Except as provided **in** paragraph (b) of this rule, an employee laid off or displaced **may** displace a junior employee in the same rank and **must** exercise his seniority in such rank before displacing an employee with less seniority in the next succeeding lower rank in **his** respective seniority group as indicated **in** Rule 1. After exhausting seniority in his respective seniority group, he will have the right to **return** to the seniority group in which he may hold seniority."

On January 11, 1978 the Carrier advised **Claimant** that he would not be allowed to displace on the Jordan Ditcher and he was furloughed **on** the next day. On February 17, 1978, the **Organization** filed the claim now before this Board and referred to a Bruce Livingston as being the junior **employee** whom Claimant desired to displace. The error in identification was subsequently corrected and **Cebern Scott** was properly identified as the junior **employee**.

The Carrier first denied the displacement on the ground that Claimant was not, in fact, senior to the ~~man~~ he desired to displace. The Carrier erred in this regard; Claimant was senior to Mr. Scott, and under Rule 6(c) should have been allowed to displace. The Carrier subsequently raised the defense that Claimant lacked qualifications as a Jordan Ditcher operator, but this Board **must** reject the defense since it was not timely raised on the property.

Claimant was recalled on March 6, 1978 to a Group 14 position. Thus, **between** the dates of January 12, 1978 and March 6, 1978, Claimant was **aggrieved, since**, under **Rule 6(c)** he should have been allowed to displace the junior **employee Cebern** Scott. This Board therefore directs that Claimant be compensated at the assistant operator Jordan Ditcher rate for that period, less any outside **earnings**.

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 in accordance with the Opinion., -

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

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1980.