NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

Award Number 23131 Docket Number MS-23065

James F. Scearce, Referee

(Whited Steelworkers of America, AFL-CIO

[The Lake Terminal Railroad Company

STATEMENT OF CLAIM: "In accordancewith the Railway Labor Act as amended, please accept this as a formal notice of the organization's intent to file its ex-parts submission to the Third Division, National Railroad Adjustment Boardin dispute between the United Steel Workers of America and the Lake Terminal Railroad Company.

These disputes involve the seniority right of the grievant to perform the work available on the tractaire equipment."

On the claim dates, claimant's machine was not available to him so he was used to perform other duties but was paid at the Tractair machine operator's rate for the other service performed. Also on the claim dates, one of the other regular assigned operators notified Carrier that he would be late in reporting for his assignment. As a result of the "late reporting" call, ajunior extra machine operator was assigned to fill the operator's assignment until the incumbent reported. However, ϕ m regular employe ϕ of sequently notified Carrier that he would be absent the entire tour. The extra employe was therefore continued on the assignment for the entire tour.

Petitioner cites Rule 15 - Maintenance of Way Department Special Rules as supporting their contention that the senior regular man whose machine was not available to him should have been used to fill the machine operator's vacancy rather than the junior extra employe.

Carrier contends that there is a long and unchallenged practice of reassigning machine operators whose machine is not available to him while maintaining the machine operator's rate of pay and of using extra employes to fill day to day vacancies as was done in these instances.

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Petitioner has failed in their burden to substantiate the alleged violation with probative evidence. We must deny 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 **Employes involved in this dispute** are respectively Carrier and Employes 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 Agreementwasnot violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: Executive

Datad at Chicago, Illinois, this 15th day of January 1981.