

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23242
Docket Number MW-22917

Richard R. Kasher, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Chicago, Rock Island and Pacific Railroad Company

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 J. R. Kirk to displace junior Group 14 Machine Operator H. Farris on February 17, 1978 (System File 11-P-592/L-126-1689).

(2) Because of the aforesaid violation, Machine Operator J. R. Kirk be compensated at his applicable rate for all time lost beginning February 17, 1978."

OPINION OF BOARD: Claimant established seniority as a Group 14 Machine Operator as of January 23, 1967. Due to a force reduction effective February 10, 1978, the position of Track Cleaner TK-1, to which he was assigned, was abolished. On February 17, 1978, Claimant attempted to displace a junior Group 14 Operator, who was assigned to Brush Cutter BC-22 as assistant operator. The Carrier refused to permit the displacement on the ground that the Claimant was not qualified. Claimant was returned to service as a Back Hoe Operator on April 5, 1978.

The Organization contended that Carrier's refusal to permit the displacement was in violation of Rule 6(c) of the parties' Agreement. The Organization argued that the Claimant's eleven years of seniority as a Group 14 Operator, which included an assignment as an Assistant Brush Cutter Operator was prima facie evidence of his obvious qualifications. The Carrier asserted that, despite this experience, the Claimant lacked the qualifications necessary to operate the brush cutter in question. The Carrier argued the BC-22 was more powerful than the brush cutter the Claimant regularly operated, the BC-10. Additional features distinguishing the BC-22 from the BC-10, cited by the Carrier, were an articulated arm and a different set of gears.

In reviewing issues such as the one under consideration, this Board recognizes the Carrier's right to determine the fitness and ability of an employe seeking to exercise displacement rights. This Board will not substitute its judgment for that of the Carrier; however, this Board will determine if there has been an abuse of discretion. If there is no reasonable basis

for the Carrier's determination, the judgment of the Carrier cannot stand even though there has been no showing of bad faith or bias.

This Board finds that the Carrier has failed to show that the BC-22 is so different in mode of operation, particularly in light of Claimant's extensive experience, that Claimant lacked sufficient qualifications to displace onto the position. The record does not show that the brush cutters, the BC-22 and the BC-10, are distinctive. Although different sets of gears may be utilized in the two machines, the controls are basically identical. Both machines use the same propulsion, are hydraulically operated and perform the same movements and functions. The Carrier has failed to show that Claimant, with his experience, could not have performed the duties on the BC-22.

Accordingly, the claim must be sustained and the Claimant compensated at the rate he would have received as Group 14 Heavy Equipment Operator of the Brush Cutter BC-22 between the dates of February 17, 1978 and April 5, 1978.

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 Employee 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1981.