

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23465  
Docket Number I-54-23293

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of way **Employees**)  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Pacific Lines))

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

(1) The Carrier violated the Agreement when it used Bulldozer Operator A. Titus to perform laborer's work at Merrill Yard on May 13, 1978 (Curier's File Mofw125-300).

(2) Because of the aforesaid violation, **Laborers** B. J. Guthrie and W. D. Freeman be allowed nine and one-half (9-1/2) hours of pay at the laborer's **time** and one-half rate."

OPINION OF BOARD: Claimants B. J. Guthrie and W. D. **Freeman** have established and hold seniority rights as Track Laborers. **Claimants** entered the service of Carrier on December 13, 1972, and April 12, 1954, respectively. On Saturday, May 13, 1978, one of **Claimants'** rest days, Carrier called, assigned and used a Tractor Bulldozer Operator to perform work which consisted of picking up and distributing track material while assisting the Burro Crane Operator.

The Organization contends that Carrier violated the Agreement when it failed to call Claimants to perform this work which it asserts has customarily, traditionally and historically been **performed** by Track Laborers. It alleges that Carrier ignored Claimants' seniority rights and further violated Rules 1, 2, 3, 5, 25 and 28 of the Agreement when it called, assigned and used a Tractor Bulldozer Operator to perform Track Laborer's work on overtime hours within the assigned designated work limits of Claimants. **The Organization** seeks **compensation** for nine (9) and one (1) half hours at **the time** and one-half rate.

Rules 3 and 5 of the **Agreement** address Classes and Seniority. **Rule 3** states:

"Rule 3 - CLASSES

Each occupation in the several sub-departments shall constitute a class, and be listed by **class** in **numerical** sequence, the lowest **number** designating the highest class and the highest number designating the **lowest class**. Such sequence shall be determined by Section (f) of Rule 26. Any existing occupation now covered by the current agreement, which is not listed in Section (f) of Rule 26, shall constitute a class and be assigned to the proper **sub-**

"department, and shall be subject to inclusion the some as though it were listed.

Not later than 10 days following the establishment of anew class and rate of pay in accordance with the provisions of Article III of the October 7, 1959, Mediation Agreement (see Appendix A), the General Chairman of the organization will be furnished notification thereof. It is agreed that any award which might be rendered in accordance with paragraph (c) (5) of the October 7, 1959, Agreement will be applied retroactively to the date new class and rate was established."

Rule 5 reads in pertinent part:

"Rule 5 - SENIORITY

SENIORITY ESTABLISHED AND CONFINED TO SUB-DEPARTMENT. ---  
(a) Seniority rights of all employees are confined to the sub-department in which employed. Seniority of employees in all sub-departments shall be shown by classes and each occupation shall constitute a class. Each class shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class.

Seniority in the classes of laborers and helpers shall begin at the time an employee's pay starts in that class. Seniority in all other classes shall begin as of the date the employee is assigned by assignment notice to the class of as of the date that he qualifies for a class under the provisions of Rule 8 of this agreement."

Rule 25 pertains to Work Limits. It states:

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"Rule 25 -- WORK LIMITS"

DESIGNATED LIMITS. -- (a) Employees assigned to track gangs having fixed headquarters location shall be assigned designated limits within which they are to perform work and such limits shall be shown in advertisement and assignment notices.

The designation of such limits shall not prevent other forces from performing any work within such established limits.

In the event worklimits are adjusted due to an increase or decrease in the number of track gangs having fixed headquarters or for other reasons, foreman of gangs involved will be advised in writing of new worklimits, with copy to the General Chairman."

"**PREFERENCE FOR OVERTIME.**-- (b) Employes of gang with designated limits will have preference to casual overtime in connection with **work** performed by **such** gang. Other employes will have preference to overtime in connection with the **work** projects performed by such employes. Overtime in connection with emergencies will be handled try **most** readily available forces, with preference to the **employes** of designated territory **when** time permits. This rule does not preclude gangs working together."

Carrier, on the other hand, denies that it violated the Agreement. It argues that the work performed **is** not work reserved or exclusively performed by Track laborers and therefore, is not a violation of seniority rights. It also states that the time spent by the **work** train in the designated **area** was four (**4**) hours, not the nine (**9**) and **one-half** hours claimed.

Based on the record, we are persuaded that the work performed is typical Track Laborer work. That is, it is work customarily performed by a Track laborer. For this reason, a member of the gang should have been called to assist the Burro Crane Operator. **When** Carrier failed to call one of the gang, it violated the Agreement. The laborer in the area was entitled to perform the work.

As to the remedy, we find no basis for two **members** of **the** gang to be compensated. Instead, we are persuaded that the senior Claimant is entitled to receive **compensation** for four (4) hours at the applicable overtime rate.

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 Agreement was violated.

A W A R D

**Claim** sustained in accordance with the Opinion.

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Attest: A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

*[Signature]*