

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24521
Docket Number MW-24334

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it assigned Trackman T. R. Holbrook instead of Machine Operator K. E. Roe to perform overtime service as a machine operator with Regional Gauging Force 1296 on April 25, 1980 (System File C-TC-981/MG-2828).

(2) The claim as presented by Assistant General Chairman G. L. Hockaday on May 6, 1980 to Manager Engineering J. A. Niehaus shall be allowed as presented because said claim was not disallowed by Manager Engineering J. A. Niehaus in accordance with Rule 21(h)(1) A.

(3) As a consequence of either or both (1) and/or (2) above, Claimant K..E. Roe shall be allowed

'10-1/2 hours at the appropriate rate'."

OPINION OF BOARD: Claimant is an Equipment Operator regularly assigned to Regional Tie Force 1213, which shares the same assigned rest day as Regional Gauging Force 1296. The Carrier determined that the latter group was to work on its rest day, April 25, 1980. Several employees from Regional Tie Force 1213, including Trackmen, were assigned to work with Regional Gauging Force 1296.

It subsequently developed that a Machine Operator scheduled for the day did not report for work. The Carrier assigned a Regional Tie Force 1213 Trackman to perform the Machine Operator work. The Organization argues that the Claimant should have been called in for this work in preference to assigning it to the Trackman.

There was involved in the claim handling procedure a contention by the Organization that the Carrier had failed to meet one of the specified time limits. This argument was discussed in detail through correspondence as the claim progressed. It is the Carrier's contention that, once it had explained the circumstances of the Trackman's assignment, the Organization had failed to support its case on the merits, concentrating instead on the procedural time-limit argument.

The Board does not agree. In its initial claim letter, the Organization refers to Rules 2 and 3, among others. Rule 2 (b) concerns "Rights accruing to employees under the seniority", while Rule 3 establishes seniority rosters which distinguish between Track Laborers and Machine Operators as separate rosters. There can be little serious contention that the work in question was that of a Machine Operator; that the Claimant's seniority standing entitled him to be called for the work; and that, without such attempt by the Carrier, assignment of the work to a Trackman was contrary to the seniority provisions of the Rules as consistently interpreted in previous awards.

In view of this finding, it is unnecessary for the Board to examine further the procedural argument on time limits raised by the Organization.

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

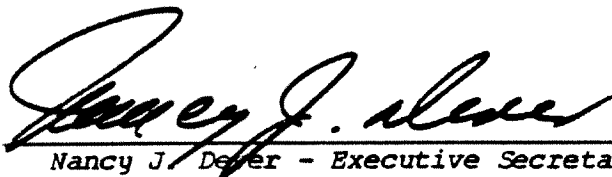
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.