

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24897  
Docket Number MW-25019

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned and used a Car Department employe to perform Maintenance of Way and Structures Department work at Grand Junction, Colorado on May 12, 13 and 19, 1981 (System File D-2381/MW-22-81).

(2) Because of the aforesaid violation, Machine Operator D. Drake shall be allowed twelve (12) hours of pay at this straight time rate.

OPINION OF BOARD: This is a claim filed by the Organization on June 29, 1981 on behalf of the Claimant, D. Drake. It is alleged in the claim that the Carrier:

"...assigned or otherwise permitted an employee of the Car Department craft who holds no seniority rights under the Brotherhood of Maintenance of Way Agreement to operate a Caterpillar 920 front-end loader in the performance of grading roads, loading track material such as ballast, excavating and general Maintenance of Way work on Grand Avenue and railroad crossing which was being repaired by the Grand Junction Section and B & B Forces."

The work was performed for four (4) hours each day on May 12, 13 and 19, 1981.

In its denial of the claim on property the Carrier states that a "front-end loader has been assigned to the Car Department for a number of years" prior to this incident and that the machine is used for "various assignments which are not the exclusive work under the Maintenance of Way Agreement". The Board observes that the above could be true without invalidating the claim since a Carrier may assign its equipment in whatever efficient manner it judges best. The instant claim does not deal, however, with the use of the piece of equipment per se but with its use to do a particular kind of work covered by the Rules at bar and by past practice. The record further substantiates that the Claimant was qualified to operate the piece of equipment to do the work in question.

The main thrust of the Carrier's argument in denying the claim is that the Claimant was not available to do the work because he had been assigned to do other work by the Carrier. Here, however, as it has done in past Awards, the Board rejects denial of a claim such as this on "availability" grounds. If the Claimant was not available where and when the disputed work took place it was because he was not assigned there by the Carrier (See Third Division 13832 and 15497 inter alia).

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

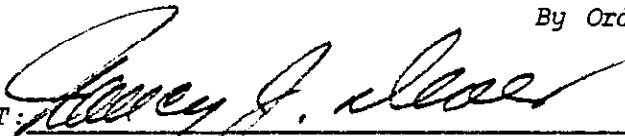
That the Agreement was violated.

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 18th day of July 1984.