

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25098  
Docket Number MW-25004

Edward L. **Suntrup**, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(Burlington Northern Inc. (former St. Louis-San Francisco  
( Railway Company)

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

(1) The Agreement was violated when Mr. D. M. Vaught was used to operate 'Tm 140' on August 12, 13, 14, September 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 21, 22 and October 1, 1981 instead of using Claimant R. G. Biswell who was available and qualified to perform such service (System File B-1952/MWC 82-4-13).

(2) Claimant R. G. Biswell shall be allowed the difference between what he should have earned as operator of 'TM 140' and what he did earn in a lower rated position on the claim dates."

OPINION OF BOARD: By letter dated October 9, 1981 the Organization filed a pay claim on behalf of the Claimant, R. G. Biswell, on the grounds that the Carrier was in violation of the current Agreement **when** it used two (2) employees, junior in seniority to the Claimant, to operate a TM-140 tractor mowing machine in August, September and October of 1981 on the Fort Smith Subdivision. After the claim was denied it was appealed on property up to and including the highest Carrier Officer designated to hear such. It is now before the Third Division of the National Railroad Adjustment Board.

As moving party in the instant dispute the burden of proof lies with the Organization (Second Division 5526; 6054; Third Division 8486; 9609; 16288). when the Carrier denied the claim it did so on the grounds that the Claimant never made a request of the Carrier, prior to the filing of the claim, to operate the machine in question, nor "did (the Claimant) express a desire to be afforded an opportunity to become qualified to operate" the TM-140 mowing machine. A search of the record fails to provide evidence of probative value to show this position of the Carrier to be incorrect. **The** Claimant may have assumed that he was qualified to operate the TM-140 since he was qualified as a **trackman** driver. There is nothing in the record to support, however, this assumption. On the contrary, the Carrier was within its rights when it assigned the employee it did to operate the TM-140 since the Carrier, and not the Claimant, is the appropriate judge of qualifications of Carrier employees barring any restrictions to the contrary in the current Agreement (**Third** Division 12994; 21697). And none have been herein found by the Board in the record evidence before it. The claim must, therefore, be denied.

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

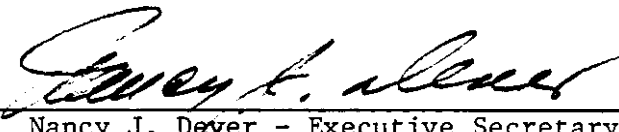
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third** Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.