

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25168
Docket Number MS-25272

Martin F. **Scheinman**, Referee

(**William R. Claspell**

STATEMENT OF CLAIM: (

(Grand Trunk Western Railroad Company

"This is to **serve** notice, as required by **the rules** of the National Railroad Adjustment Board, of my intention to file an **ex parte** submission on July 7, 1983 covering an unadjusted dispute between me and the Grand Trunk Western Railroad involving the question:

Claiming 8 hrs punitive rate, in compensatory damages for October 12, 1981, and each subsequent date, and for November 2, 1981, and each subsequent date the position of Crane Operator was not filled:

OPINION OF BOARD: Claimant, William R. **Claspell**, at the time of this appeal, held an assignment of 1600 hours Crew Calling in Seniority District No. 2 - Battle Creek, Michigan. Included in the same Seniority District are two regularly assigned Materials Department - Crane Operator positions.

In 1981 and 1982 various short vacancies existed on the two Crane Operator positions. On many of those days Carrier waived the Crane Operator qualifications on the Crane Operator positions and called an Extra Board Clerk to perform the so-called **Groundman's** work. In each case the **employee** was paid the straight time rate of pay.

Claimant, a fully qualified Crane Operator, alleges that he should have been called from the seniority list to fill the short Vacancy. **He** asserts that Carrier's failure to call him on the claimed dates violated Rules 5, 12 and 15 of the Agreement. Those provisions state, in relevant part:

"RULE 5

Promotion, **Assignments** and Displacements

Employees covered by these rules shall be in line for Promotion, **assignments** and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

"RULE 12

Short Vacancies and Bulletined Temporary Vacancies

(al New positions and vacancies of thirty (30) calendar days or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such new positions or vacancies will extend beyond the thirty (30) day limit, they shall be immediately bulletined as provided in Rule 10.

* * *

(c) When filling short vacancies, employees will be selected in accordance with Rule 5 and Rule 15(c)."

"RULE 15

Reducing Forces and Displacements

(c) When forces are increased or vacancies occur, furloughed employees shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees when available, shall be given preference on a seniority basis to all extra work, short vacancies, and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces:

Claimant argues that each position must be filled and that Carrier had no right to **"blank"** either position. Claimant seeks 8 hours pay, at time and one-half, for each day that the position was improperly blanked.

The claim must be denied. The Claimant has failed to establish through probative record evidence that any of the Agreement rules were violated. More specifically the evidence fails to establish that either of the Crane Operator positions were blanked on any of the days in question.

Instead, we are persuaded that the positions were filled, in each case, by an **Extra Board employee**. Carrier was completely in its rights to waive the qualification of Crane Operator here. As such, there is no Agreement support for any allegation that Carrier's action violated the Agreement.

Accordingly, the claim must 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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1984.

