

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25341
Docket Number MW-24712

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Southern Pacific Transportation Company
Eastern Lines

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

(1) The Agreement was violated when the position of Laborer-Driver as advertised by **Bulletin** No. 318 dated September 25, 1981 was awarded to an applicant junior to Laborer-Driver Robert Cantue (System File MW-82-S).

(2) The position of Laborer-Driver referred to in Part (1) hereof shall be awarded to Mr. Robert Cantue and he shall be compensated for any time he has been deprived of, according to the time roll records of Extra Gang No. 132, beginning October 19, 1981.

OPINION OF BOARD: The basic facts in this dispute are as follows:

On September 25, 1981, Carrier **issued** Vacancy Bulletin No. 318 advertising a new **position** of Laborer-Driver on Extra **Gang** 132. Several **employees** including **Claimant** submitted bids for the **position** and Carrier assigned a junior employee to the position on October 14, 1981. The Organization filed a claim on behalf of Claimant on November 5, 1981, **wherein** it charged Carrier with violating the controlling Agreement, particularly, Articles 2, 8, 9 and 16.

In defense of its petition, the Organization argues that assigning a junior employee to the position deprived Claimant of his seniority and the correlative opportunity to drive the dump truck assigned to the position. It avers that the new position was created because of the addition of the aforesaid vehicle and driving this vehicle was a more desirable assignment. It asserts that Carrier was obligated to award him the position, consistent with Article 8, Section 4 since in making assignments to fill bulletined positions, Carrier was required **to** assign the senior qualified employee in the class involved.

Carrier contends that it assigned the position to a less senior Laborer-Driver **since** **Claimant** was already a Laborer-Driver in Extra Gang 132. **It** argues that it was not required by any Agreement rule or position bidding practice to specify what equipment a particular Laborer-Driver may operate or the vehicle identification number when such positions are bulletined. It avers that it fully complied with Articles 8 and 23 which **govern the bidding** and assignment of Laborer-Driver positions.

In our review of this case, we concur with Claimant's position. While Carrier is correct that it would be redundant, in effect, for Claimant to submit a bid application for the new Laborer-Driver position of Extra **Gang** 132, there are no preclusive or restrictive provisions in either Articles 8 or 23 that would prevent such action. From a practical perspective, however, it **would** be illogical for Claimant to submit a bid application, if the Laborer-Driver assigned to an extra gang operate the different vehicles assigned to the work unit. We have no evidence that a vehicle rotational practice was observed here. If it were so, overtime would have to be assigned on a seniority basis rather to the incumbent of a **specific** vehicle. Otherwise, a junior employee assigned to operate a particular vehicle would accrue advantages that are superior to those benefits accorded senior employees. By definition, this would be unfair to the senior employee.

In the instant case, Claimant was presumably aware that operating the dump truck was a better assignment than driving the **gang** truck. The dump truck was more frequently used for overtime assignments. It would be meaningless for him to bid on a Laborer-Driver within the **same** extra gang, if the **Laborer-Driver** of the **gang** were used interchangeably with the assigned motor vehicle equipment. The senior employees would have first claim to the overtime assignments. But overtime was assigned to the operator of the dump truck who was a junior employee. He enjoyed overtime benefits. Since Claimant was not prevented by **any Agreement provision** from bidding on the new bulletined Laborer-Driver position pursuant to the defining terms and specifications of Articles 8 and 23, he was entitled as the **most** senior bidder to the position. Fitness and ability were not the governing criteria in this selection and thus, seniority was the salient consideration. In the absence of an emergency or some persuasive showing that Claimant was unqualified to operate the dump truck, it would be patently unfair to deny him the overtime advantages that were provided to a junior employee. Operating the dump truck was a more choice assignment. We will sustain the claim.

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.

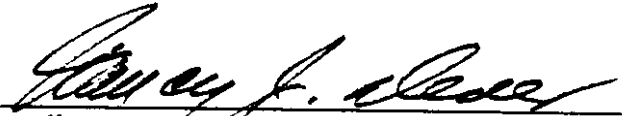
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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.