

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25639
Docket Number MW-25523

Stanley L. Aiges, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railroad Company

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

"(1) The Carrier violated the Agreement when it assigned junior Trackman J. Garretson to fill a temporary vacancy as machine operator (forklift) at the Reclamation Plant on October 19, 20, 21, 22 and 25, 1982 instead of assigning and using Trackman R. P. Mills who was senior, available, willing and qualified to fill that Vacancy (System File C-TC-1481/MG-3703).

(2) Because of the aforesaid violation, R. P. Mills shall be allowed the difference between what he should have been paid at the forklift operator's rate and what he was paid at the trackman's rate for sixty-four (64) hours."

OPINION OF BOARD: Claimant R. P. Mills is a Trackman assigned to the Carrier's Barboursville, West Virginia Reclamation Plant. He alleges that Trackman J. Garretson was assigned to operate a forklift, (a Machine Operator's responsibility) on October 19, 20, 21, 22 and 25, 1982. Mills, who is senior to Garretson, claims he should have received that assignment and upgrading. He seeks the differential between the Machine Operator and Trackman rate of pay for a total of 64 hours.

It is well-established that the burden of proof here rests upon the Petitioner. It is obliged to prove all essential elements of its Claim. This Board has so ruled in a number of prior cases. See, for example, Third Division Awards 18996, 19331, 20943.

In order to prevail here, Petitioner must conclusively establish that: (1) a Machine Operator vacancy existed on the dates at issue; (2) Garretson was assigned to fill that vacancy; and (3) Garretson performed such work at the Carrier's direction.

In our judgement, Petitioner has failed to meet its burden of proof. Its several allegations are not supported by substantive evidence. We cannot conclude, on the record before us, that a Machine Operator vacancy existed on the dates in question. In fact, the record reflects that sufficient Machine Operators were on duty to handle all necessary work. Nor does the record reveal that Garretson was specifically assigned to operate a fork lift on the dates in question.

Under the circumstances, we are obliged to deny the instant 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.

