

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25700
Docket Number MW-25663

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when, beginning on October 25, 1982, it assigned and used a trackman to fill a machine operator's position instead of recalling and using furloughed Machine Operator M. Spencer (System File C-TC-1558/MG-3787).

(2) Machine Operator M. Spencer shall be allowed pay at the machine operator's rate equal to that paid to either Trackman B. Pendleton and/or Trackman L. Webb beginning October 25, 1982 and continuing until such time Mr. Spencer is recalled to work as a machine operator.

OPINION OF BOARD: It is the Organization's position that Carrier violated the Controlling Agreement, particularly Rules 2(b) and 66(f) when it (Carrier) upgraded on a day to day temporary basis two trackmen to operate roadway machinery in connection with the installation of new rail ties in the Walbridge, Ohio area. The two trackmen performed this work between October 26, 1982 and November 5, 1982. The Organization asserts that Claimants who held seniority as roadway machine operators and were on furloughed status at the time, should have been called for this work since Carrier was effectively precluded from using employees who did not hold seniority in the Roadway Machine Operator Group.

Carrier argues that it was permissible to upgrade temporarily the two trackmen since the type of work performed did not require the positions to be bulletined. It maintains that it had the right to utilize employees already in service rather than to recall furloughed employees of an undetermined status, and importantly, observes that such utilization was consistent with a long standing practice to upgrade temporarily senior trackmen with basic forces.

In our review of this case, we agree with the Organization's position. Careful analysis of Rule 2(b) within the context of past Board decisions and the clear contemplated purpose of Rule 3 pointedly shows that the parties intended to maintain an explicit seniority demarcation between groups and classes. It might well be that an informal practice developed whereby employees were temporarily upgraded, but such practice does not supercede an unambiguously stated rule. Moreover, the protection accorded by the seniority provisions are not invalidated by Rule 18 since as we have indicated in Third Division Award No. 2716, service rights apply to all positions irrespective of the type of assignment. In the instant case we find nothing in the fact patterns or the background circumstances that would reasonably justify a determination at variance with our most recent award

involving the same parties and the same basic issue and accordingly, we must sustain the claim. (See Third Division Award No. 24521.) We note, however, that the contested work was performed over a nine day period and Claimant is to be paid for this time at the applicable machine operator rate.

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

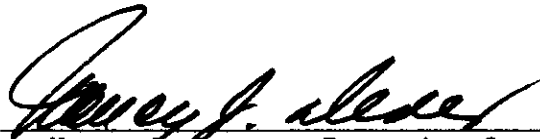
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.

