

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25703

Docket Number MW-25675

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 it assigned and used either a Bridge and Structures Group or Water Supply Group employe instead of a Roadway Machine Operator Group employe to operate a backhoe at Newport News Terminal on November 29 and 30 and December 9, 13, 14, 16 and 17, 1982 (System File C-TC-1559/MG-3833).

(b) Because of the aforesaid violation, cut-back Machine Operator R. Smith shall be allowed the difference between what he earned as a trackman and what he should have earned as a machine operator for fifty-six (56) hours.

OPINION OF BOARD: The pivotal issue in this dispute is whether the Agreement was violated when Carrier used B&B mechanics to operate a backhoe in connection with a Bridge and Structures maintenance and repair project at the Newport News Terminal. The Organization charges Carrier violated Rules 2(b), 3 and 66(f), while Carrier asserts that its assignment of said forces was in accordance with Rule 66(a) and traditional past practice which permitted the upgrading of employees for temporary intermittent machine operator work. There is also a dispute regarding the time the B&B forces performed the contested work with Carrier asserting it was performed on December 16 and 17, 1982, respectively, while the Organization claims it was performed on November 29 and 30, December 9, 13, 14, 16 and 17, 1982.

In our review of this case, we concur with the Organization's position. We have considered the arguments and rules cited with respect to the parameters of machine operator's work and find that the work in question was that of a machine operator. We have also reviewed the argumentative relationship between Rule 2(b) and Carrier's assertion of past practice and find that under the circumstances herein and the precedential effect of Third Division Award No. 24521, Rule 2(b) takes precedence. We have further reviewed the respective arguments with respect to the appropriate application of Rules 66(f) and 66(a) and find that Rule 66(f) governs in this instance. Rule 66(f) is a specific rule as contrasted with Rule 66(a) and provides that Roadway Machine Operators will be used to operate all of the "so called" heavier machines in the track and bridge structures work. Based on the parties on site correspondence, we find no persuasive evidence that a back-hoe is not equipment covered by Rule 66(f).

As to the correlative question of when the B&B forces were actually used, we agree with Carrier that from the claim appeals correspondence exchanged, the Organization did not establish unequivocally when the work was performed. In its letter of March 29, 1983, Carrier noted that it was performed on December 16 and 17, 1982, but it was not addressed or rebutted when the Organization responded by letter on April 21, 1983. As such, we will sustain the claim for these 2 days.

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

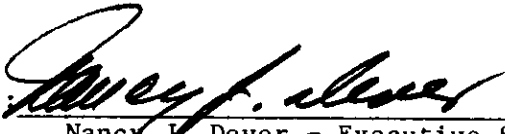
That the Agreement was violated.

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.

