NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26339
THIRD DIVISION Docket Number MW-26265

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 R. Martin instead of cut-back Machine Operator R. Osborne to fill a temporary vacancy of Class 'A' Machine Operator on the Long Fork Sub-division March 14, 1983 through March 30, 1983 (System File C-TC-1805/MG-4034).

(2) Cut-back Machine Operator R. Osborne shall be allowed the difference between what he would have received at the Class 'A' machine operator's rate and what he was paid at the trackman's rate during the claim period referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant, working as a Trackman at Wayland, Kentucky, holds seniority as a Class "A" Machine Operator. On dates between March 14 and March 30, 1983, a temporary position operating a Class "A" machine was assigned at Martin, Kentucky, to a Machine Operator junior to the Claimant.

The Organization argues that the work should have been assigned to the Claimant under Rule 2(b) which reads as follows:

> "Service Rights -- Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway Company as hereinafter provided."

The Carrier contends that the work was properly assigned to an employe at the site in accordance with what it claims to be established practice.

The Board finds that the Claimant was entitled to the upgraded work and relies on Awards involving the same parties for guidance, particularly Third Division Awards 25701 and 25926, both of which reference previous Awards, involving closely similar situations.

Without contradiction the Carrier asserted that the machine was not operated on March 17, 18 and 30 -- three of the dates claimed. The Claimant is not entitled to remedy for these days. The Award will provide that the Claimant receive, for the other cited days, the appropriate rate of pay representing the hours worked on the machine, less his actual earnings in the same period, calculated on a day-by-day basis.

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 Employes involved in this dispute are respectively Carrier and Employes 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 8th day of June 1987.