

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26554

Docket Number MW-25861

Robert W. McAllister, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company (Southern Region)

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

1. The Agreement was violated when, beginning January 24, 1983, other than Roadway Machine Operator Group employees were used to operate a tie handler on the E&BV Subdivision (System File C-TC-1790/M@4018).

2. (a) Because of the aforesaid violation, Machine Operator R. D. Day shall be allowed eight (8) hours of pay at the tie handlers's straight time rate for each work day he was furloughed and the difference between what he should have been paid at the tie handler's rate and what he was paid at the trackman's rate, subsequent to recall, beginning sixty (60) days retroactive from April 6, 1983.

(b) The position of tie handler operator on the E&BV Subdivision shall be bulletined and awarded in compliance with the Agreement."

OPINION OF BOARD: This dispute involves the Carrier's assigning a Carpenter from the Bridge and Structure Group without machine operator seniority to operate a Tie Handler machine during the period, January 24, 1983, to April 6, 1983. The Organization contends this assignment is improper and the work has customarily, historically, and traditionally been performed by the Carrier's Roadway Machine Operator Forces. Furthermore, the Organization argues the work is contractually reserved to them by Rule 66(f) which states:

"Employees in the roadway machine operator group will be used to operate all of the so-called heavier machines used in the performance of track and bridges and structures work except Mole Ballast Cleaners (see Paragraph (b) above). The smaller machine tools, such as power saws, tampers, drills, etc. will be used by the craft or class doing the particular work the same as the craft or class uses hand tools in connection with such work."

The Carrier asserts the safety factors involved in a nine span dock plate girder bridge one hundred fifty-two (152) feet above the ground necessitated the use of a qualified Bridge and Structural worker. This argument ignores the specific rights of employees in the Roadway Machine Operator Group to operate "so-called heavier machines." As the Board noted in Third Division Award 25926, the dispute is similar to that involved in prior Third Division Awards 25924 and 25925. We consider this case to be on point with Third Division Award 25926, which in pertinent part states:

"As discussed in the two previously cited Awards, the Board finds convincing basis for the Organization's position as to the clear and precise effect of Rule 66 (f). Seniority rights are not limited to instances where an employee must take an initiative, especially where he may have no advance knowledge of the assignment of other employees.'

The Organization seeks payment of eight (8) hours for each day the Claimant was furloughed and the Tie Handler was operated during the period January 24 through April 2, 1983. Notwithstanding, there is nothing in the record to rebut Carrier's contention the Tie Handler was operated by the Carpenter for eighteen (18) days. Therefore, we will sustain the Claim to the extent that the Claimant is entitled to the appropriate rate of pay for eighteen (18) days less his actual earnings.

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 Employee involved in this dispute are respectively Carrier and Employee 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

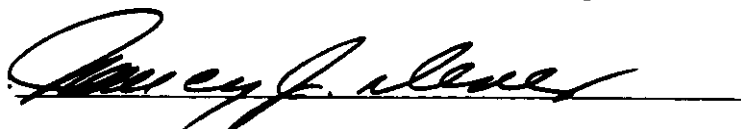
That the Agreement was violated.

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 30th day of September 1987.