

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Maine Central Railroad Company

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

(1) The Carrier violated the Agreement when it used junior foremen to perform overtime service on August 6 and 13, 1983 instead of using Foreman D. A. LaPointe who was senior, available and willing to perform that service (System File MW-84-4).

(2) Because of the aforesaid violation, Foreman D. A. LaPointe shall be allowed nineteen (19) hours of pay at his time and one-half rate (total of \$346.83)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The present case involves the assignment by Carrier of certain Track Foremen headquartered at Canton, Maine to operate a Jordan Spreader on successive Saturdays in July and August, 1983. On each of those four (4) occasions Carrier assigned as primary operator W. R. Lowell, an employe who indisputably was a fully qualified Jordan Spreader operator. That assignment evidently was made by Carrier under Rule 21(A) of the controlling Agreement.

On the last two Saturdays in July, 1983, Carrier assigned to train with Operator W. R. Lowell, Claimant whose seniority started April 26, 1979. On Saturday, August 6, 1983, Carrier assigned Track Foreman Fairfield, seniority date November 26, 1983, and on Saturday, August 13, 1983, Track Foreman Tingley, seniority date June 21, 1979, to train and observe with Operator Lowell. On each of these occasions, the Track Foreman was assigned to assist,

observe and train with fully qualified Operator Lowell, with the aim of becoming qualified on the Jordan Spreader. On each of those occasions the assigned employee was paid at the overtime rate of pay. On August 28, 1983, Claimant, who was also at that time Assistant General Chairman for the Organization, filed the present Claim on his own behalf seeking overtime pay earned by the junior employees on August 6 and 13, 1983. In this Claim, it was asserted that the junior Track Foremen were "no more qualified than me" and maintained that his seniority entitled him to be assigned on August 6 and 13, 1983, to assist on the Jordan Spreader.

By letter of February 17, 1984, Carrier's Chief Engineer denied the Claim, pointing out that Claimant, as well as, Fairfield and Tingley were all "trainees" and not fully qualified on dates in question. In further handling the Claims also were denied until final appeal to the Board.

The June 20, 1984, appeal letter to Carrier's highest designated Labor Relations Officer contains the following very important admission against interest:

"While the Carrier contends all three employees are considered 'trainees,' it is our contention that D. A. LaPointe, as the senior employee, should have been called to work with Foreman Lowell on August 6 and 13, 1983, thereby having the opportunity to further his training and experience on the Jordan Spreader so as to become a qualified operator."


The only rule mentioned in handling on the property was Rule 21(A) raised by Carrier in its original denial. Under Rule 21(A) seniority preference for assignment is conditioned upon the senior employee being a "qualified operator." The record plainly shows that Claimant was not a qualified operator on Claim dates. Accordingly Rule 21(A) provides no support for his Claim. Even if Rule 3, which was belatedly raised for the first time in the exparte submission, were considered before the Board standing alone it would not support this Claim. Finding no support in facts or contract we must deny the present Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.