

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Grand Trunk Western Railroad Company (formerly
(The Detroit and Toledo Shore Line Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Trackman F. Hammac instead of furloughed Machine Operator P. Wickenheiser to operate a tie crane between Monroe, Michigan and Toledo, Ohio beginning July 28, 1986 (Carrier's File 8365-1-221).

(2) The claim as presented by General Chairman J. L. D'Anniballe on September 23, 1986 to Division Engineer R. O. Papa shall be allowed as presented because said claim was not disallowed by Assistant Director or Labor Relations R. J. O'Brien (appealed to him on January 26, 1987) in accordance with Article 41(a)(1), (2) and (3).

(3) As a consequence of Parts (1) and/or (2) above, furloughed Machine Operator P. Wickenheiser shall be allowed pay for all straight and overtime hours which the tie crane was used beginning July 28, 1986 and continuing until the violation is corrected."

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.

Claimant had seniority as a Machine Operator at the time this dispute arose, and had been furloughed due to a general force reduction. He was thereafter assigned by Carrier to a position elsewhere on the property. Starting on July 28, 1986, Carrier assigned a Trackman, with no machine operator seniority, to operate a tie crane. This work continued until at least October, 1986. The position was not posted.

The Organization argues that Claimant was the senior qualified available employee and should have been called to fill the tie crane vacancy. Further it is asserted that the position in question, known to be for a period in excess of thirty days, should have been bulletined. The Organization maintains that Carrier violated Articles 20, 21, 27, 28 and 32 of the Agreement. Carrier, on the other hand insists that it was not obligated to recall Claimant to fill a temporary vacancy; it was not obligated under the rules to recall an employee from furlough under these circumstances.

Initially, the Board notes that it is not necessary to resolve the Organization's procedural arguments, in view of the Findings.

After a careful review of the facts herein, the Board believes that the Organization's position is sound. It is clear that under the rules whether a position is temporary or permanent if it is to exist for more than 30 days it must be bulletined. Under the rules Carrier is given a ten day grace period to make that determination. In this dispute the work began on July 28, 1986, and continued until at least October (the record is unclear with regard to the completion of the task). The position should have been bulletined. There is no evidence to show that the work was intermittent. Therefore the Claim must be sustained. However, with respect to remedy, Claimant should be made whole for losses sustained, after ten days of the position starting, until he was either placed in a Machine Operator role or the task terminated, whichever came first. The extent of his compensation shall be the difference between what he earned in his other assignment with Carrier and what he would have earned had he been given the Tie Crane assignment.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.