

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned Red River Division Machine Operator T. Core to operate Burro Crane No. BC-45 on the Rio Grande Division and refused to allow Rio Grande Division Machine Operator J. Hollowell to displace on Burro Crane No. BC-45 effective March 28, 1988 (Carrier's File 880263 MPR).

(2) As a consequence of the aforesaid violation, Mr. J. Hollowell shall be allowed pay for:

'*** eight (8) hours on March 29, 1988, at Burro Crane operator's rate of pay of \$12.7378 per hour; difference in Trackman's and Burro Crane Operator's rates of pay beginning March 30, 1988 through April 5, 1988, while Claimant worked as a Trackman at Monahans, Texas. Claim in behalf of Mr. Hollowell also for mileage of 200 miles each week, beginning March 30, 1988, and expenses under provisions of Award 298, also beginning March 30, 1988, to continue so long as Claimant is deprived of displacing the junior operator on the Burro Crane-45.'"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant holds seniority as a Machine Operator on the Carrier's Rio Grande Division. As a result of a force reduction and insufficient seniority to hold a regular assignment as a Machine Operator, he was working as a Trackman. On March 29, 1988, the Carrier assigned a Machine Operator with no seniority on the Rio Grande Division to operate a Burro Crane on the Rio Grande Division. This Machine Operator was junior to the Claimant.

The Claimant sought to displace on the Burro Crane. The Carrier denied his request based on the assertion that the Claimant was not qualified on the Burro Crane. During the Claim handling procedure, there was no serious contention to the contrary as to the Claimant's lack of qualification. The Carrier relied on Rule 2 (g), which refers to employees in a lower classification having "displacement rights over junior employees in the higher classification if qualified for the position held by the junior employee" (emphasis added).

Under these circumstances, the Carrier is not required to place a senior unqualified employee on the position. The Organization notes the use of an employee holding no seniority on the Rio Grande District, where the Burro Crane was operated. While this may have raised some question as to an improper assignment in the seniority district, it did not vest the Claimant with the right to make a displacement without being qualified. When the position was later bulletined as a regular assignment, the Claimant was selected under the less stringent provisions of Rule 10.

Third Division Award 28476, involving the same parties in similar though not identical circumstances, concluded as follows:

"The general right to require qualification prior to displacement is well established. The Carrier's position is supported."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.