

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier assigned Vehicle Operator B. J. Adkins to operate a Class 2 Machine (Brush Cutter W.C. 2012) at various locations on the Blue Creek Secondary and West Virginia Secondary from July 5, 1988 through August 18, 1988 (System Docket MW-107).

(2) As a consequence of the aforesaid violation, Mr. H. E. McAfee shall be allowed eight (8) hours of pay at the Class 2 Machine Operator's rate for each day Vehicle Operator Adkins operated the brush cutter from July 5 through August 18, 1988."

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 employee 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.

This Claim arose when Carrier upgraded an employee with Vehicle Operator seniority to perform Class 2 Machine Operator work. Claimant, a furloughed employee, did not possess Class 2 seniority, but he did have seniority as a Class 3 Machine Operator.

The Organization contends that Carrier violated the Agreement when it failed to advertise the position for bid. If advertised, the Organization says Claimant could have bid on the position and would have been the successful applicant. In addition, the Organization says Claimant was entitled to be treated as an automatic bidder on any advertisement.

The Carrier argues that the work of the Brush Cutter was such that advertisement was not required. Rather, Carrier says the Vehicle Operator was properly upgraded in accordance with the temporary assignment provisions of the Agreement. Carrier raised other defenses as well.

Our review and analysis of this record is, as it must be, limited to the evidence and arguments presented by the parties on the property. When we confine ourselves to that perspective, the record presents us with several problems.

It is not clear that the work performed required advertisement during the timeframe in question. The work was essentially sporadic in July. When the work became more frequent in August, the work was advertised and awarded to a third employee.

It is also not clear that Claimant had any priority right to the work. Neither the temporarily upgraded employee nor Claimant possessed the requisite Class 2 Machine Operator seniority. The record fails to establish the relative seniority dates of either the Claimant or the upgraded employee. Accordingly, there is no information on which this Board can confidently determine which employee would prevail in a competitive bidding situation. This dilemma remains whether or not Claimant is deemed to be an automatic bidder.

The Organization had the burden of proof on these issues. Our review of the record convinces us that the Organization has failed to satisfy its burden. Accordingly, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.