

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 other forces to fill a machine operator position (SS-22M) instead of recalling and assigning furloughed Machine Operator M. W. Neuner beginning on April 20, 1988 and continuing (Carrier's File 880523 MPR).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be allowed pay for eight (8) hours per day and any overtime and holiday pay beginning April 20, 1988, in addition to any additional expense incurred that would normally be covered by benefits paid by the Carrier, continuing until the Claimant is allowed to fill the position in question or returned to service in accordance with his seniority."

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.

As Third Party in Interest, the International Union of Operating Engineers was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The dispute before the Board in this Award and that involved in Third Division Award 29112 concern the assignment of operators to certain pieces of heavy equipment. Some items of heavy equipment are operated by Carrier employees assigned under an Agreement with the International Union of Operating Engineers. However, according to Carrier, from time to time, when operators

working under the IUOE Agreement are not available, qualified employees working under the Agreement with the Organization were utilized. The Organization contends, on the other hand, that it was the location of the job which dictated which employee would be assigned. If the machine was working in certain terminals an Operating Engineer would be used. If it was working on maintenance work outside the terminal a member of its craft would be used.

The Organization has the burden of establishing necessary elements in support of its Claim. This has not been done on this record. The facts giving rise to the initial Claim filing demonstrate this. At the time Claimant was furloughed, from a machine operators position working under the Agreement covering members of the Organization, he attempted to displace the operator of a Speed Swing Machine being operated by an employee working under the IUOE Agreement. There is no evidence that any complaint was registered (at any time prior to the attempted displacement) concerning the operation of this Speed Swing by an Operating Engineer. It was only after Claimant was not allowed to displace an employee working under the IUOE Agreement that allegations were advanced that the Speed Swing was improperly manned when it was working outside a terminal.

When this is considered with Paragraph (e) of the Scope Rule, reading:

"Does not include operators and helpers on heavy equipment on Eastern and Western except when assigned to system bridge gangs,"

Rule support for the Claim is missing.


The Claim is without merit. It will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.