

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 Employes
(
(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 allowed an employee from outside the Scope of the Agreement to displace Machine Operator C. D. Mitchell from his regularly assigned position on April 13, 1988 (Carrier's File 880510 MPR).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be allowed eight (8) hours' pay per day at his machine operator's rate of pay for April 13, 14, 15, 18 and 19, 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 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.

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

This Claim is a companion case to that involved in Third Division Award 29111, wherein the Board concluded that the Organization has not established that under its Agreement, members of the maintenance of way Craft have an entitlement to work on certain items of heavy equipment which Carrier contends are to be operated by employees assigned under an Agreement between Carrier and the International Union of Operating Engineers, when IUOE represented employees are available.

Claimant was removed from a machine when an IUOE represented employee became available. Carrier contends that he was displaced and it was not necessary that he be afforded five days notice of job abolishment, as required by its Agreement with the Organization. The original Claim of the Organization stated:

"If the Carrier wanted to transfer Unit #6375 to another department of the U.P. System, then a five day notice and cut-off would have been in order for the Claimant."

The Agreement between the Organization and the Carrier cannot be fairly read to provide that a machine operator assigned under its terms could be displaced by an employee working under a different Agreement and holding no seniority rights under the Organization's Agreement. Accordingly, Claimant's removal from the machine cannot be considered as a displacement as contended by Carrier. On the other hand, the machine was (at least constructively) transferred to Carrier's Heavy Equipment Department. Claimant's assignment as operator of the equipment, for all intents and purposes, must be considered as abolished effective with the transfer. An appropriate abolishment notice should have been provided.


The record indicates that Claimant lost one day's pay as a result of being taken off the machine. The Claim will be sustained for one day's pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

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