

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30228
Docket No. MW-29774
94-3-91-3-123

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
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(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier failed and refused to allow Class 2 Machine Operator M. A. Hovey to displace Foreman S. Duffield from a Jordan Spreader on September 1, 4, 5, and 6, 1989 (System Docket MW-914).
- (2) The Agreement was further violated when the Carrier failed and refused to allow Class 2 Machine Operator M. A. Hovey to displace junior Class 2 Machine Operator C. Stocum on September 7 and 8, 1989.
- (3) As a consequence of the violations referred to in Part (1) and/or Part (2) above, Class 2 Machine Operator M.A. Hovey shall be compensated for forty-eight (48) hours at his Class 2 Machine Operator's rate of pay."

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 employe 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 Class 1 and Class 2 Machine Operator. By way of background, he attempted to displace a junior employee on a Tamper on August 16, 1989, but was refused on the contention that he was not qualified. Demand for pay for this day was made as part of this Claim. In the Claim processing procedure, pay was granted for this day on a procedural basis, without concession by the Carrier as to the merits.

The Claimant on August 17 displaced into another position. He held this position, until displaced, through Thursday, August 31, 1989, working on a four-day ten-hour-a-day schedule and thus having completed his 40-hour week. Friday, September 1, was a day he presumably would not have been scheduled, even if not displaced. September 2-3 were his rest days, and Monday, September 4, was a holiday.

On September 5, the Claimant attempted to displace an employee (whose permanent position was that of Foreman) who was operating a Jordan Spreader. This was denied on the basis that the Claimant held no seniority as a Foreman and thus, according to the Carrier, could not displace the Foreman.

On September 6, 7 and 8, there are varying accounts as to the Claimant's efforts to displace on a Machine Operator position, without success. He was permitted to displace on this position on Monday, September 11. As will be seen, the details of what occurred on September 6-8 do not need resolution here.

There is no dispute that the Foreman was operating the Jordan Spreader on September 5. The Foreman held less seniority as a machine operator than did the Claimant. As the Board views it, the Claimant was entitled to displace on the Machine Operator work. This does not mean, as the Carrier would have it, that he was attempting to displace a Foreman as a Foreman. On September 5, however, the question concerned which employee was entitled to perform the Machine Operator work. The Board finds that the Claimant was improperly denied this opportunity. Obviously, his rights were limited to that Machine Operator work and not that of Foreman and would have lasted only as long as such Machine Operator work was available. The record does not disclose how long a period this would have covered.

The Board concludes that the Claimant was improperly denied the opportunity to displace on September 5. Had he done so, this presumably would have provided him with work in that position or the opportunity to displace elsewhere when that work was completed.

On this basis, the Board finds it unnecessary to resolve the disputed facts as to what occurred on September 6-8 at another location. Had he been permitted to fill the Jordan Spreader position on September 5, he may well not have had to seek a different placement beginning the following day.


The Claim will be sustained, except for September 1. By the Claimant's own statement, he did not seek to displace on that date. It is noted, however, that this would have been a non-scheduled day in the four-day, ten-hour week. Since the Award will provide pay for the day following the September 4 holiday and since the Claimant worked his full schedule in the previous week, the Board concludes there is no dispute as to holiday pay entitlement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.