

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30797
Docket No. MW-30583
95-3-92-3-350

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Oklahoma, Kansas & Texas Railroad Company)

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

- (1) The Agreement was violated, beginning December 31, 1990, when the Carrier assigned an MKT employe, Machine Operator G. Sexton, to perform machine operator's work (operate the BC 47 burro crane picking up plates, anchors and rail) in conjunction with OKT Extra Gang 8903 on the OKT seniority territory at Chickasha, Oklahoma (System File MW-91-17-OKY/910331 OKT).
- (2) As a consequence of the aforesaid violation, OKT Machine Operator B.E. Goff shall be allowed pay at his straight time rate for an equal proportionate share of the total number of man-hours expended by the MKT employe performing the aforesaid track work on the OKT seniority territory."

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 is a claim made on behalf of Claimant, an OKT Machine Operator, for work performed by a MKT Machine Operator operating the BC 47 burro crane in conjunction with OKT Extra Gang 8903 on and after December 31, 1990. The Carrier does not dispute that the work of operating this burro crane belonged to Organization members on the OKT and that it did not assign such work to an OKT employee, but rather, assigned it to an MKT employee who was a member of the Organization.

The record on the property reveals that the Carrier bulletined the job on the OKT, and received only one bid from an OKT employee, who opted to take another job as his first preference. The Claimant did not bid on the job. It appears that the area of contention is the manner in which this job was bulletined. The Carrier apparently bulletined the BC 47 burro crane to a system gang, as a systemwide machine rather than as a district machine. The Organization clarified that the position was not a system position and was not part of the Consolidated System Agreement. The Organization points out that the Claimant was a District Machine operator and, even if he saw the bulletin, had no seniority right to bid on a systemwide machine under Article 3, Rule 2 of the Agreement, and, thus, cannot be disqualified for failing to bid. The Carrier notes that the job was bulletined where all OKT employees could see it, and the Claimant was obligated to let the Carrier know if he wanted the job, but did not because he was fully employed elsewhere. The Carrier contends that even if the system posting was improper, no damages are appropriate since it opted to fill the job in the absence of any interested OKT employee in the least offensive way, with another employee rather than to contract it out, and the Claimant suffered no lost work opportunity.

Prior Awards of the Board have established that work within a specific seniority district must be reserved for employees holding seniority in that district, and cannot be turned over to employees of another district, even if they are covered by the same Agreement. See Third Division Awards 5413, 4667, 24480, 24576. The Carrier does not appear to dispute that the burro crane work in question was OKT district machine operator work, despite its bulletining the job of operating it on a systemwide, rather than a district basis. Regardless of why it chose to do so, the facts establish that an MKT machine operator was given the position, despite the fact that he had no demonstrable seniority right to work on the OKT district, thereby violating the seniority rights of Claimant. We find that the Carrier violated Articles 3 and 5 of the Agreement by its improper posting and job assignment.

This claim is not defeated by the fact that the Claimant was fully employed during the time period in issue. The Carrier's action represented a loss of work opportunity to employees within the proper seniority district, and a monetary remedy is appropriate in line with the rationale set forth in Third Division Award 19840. See also Third Division Awards 30076, 30408 and Award 82 of Public Law Board No. 1844. It is not clear from the record the extent of wage loss suffered by the Claimant, if any. The Claimant shall be made whole for the amount of time that the MKT employee performed work on the BC 47 burro crane in conjunction with Extra Gang 8903, less earnings he received during that time period.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.