

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31303
Docket No. MW-30964
95-3-92-3-862

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former
(Fort Worth and Denver Railroad Company)

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

- (1) The Carrier violated the Agreement when {the} it assigned Machine BNX 2500034 for a period of over thirty (30) days, beginning September 30, 1991 and continuing, without bulletining a Group 2 Machine Operator position as required by Rule 12 (System File F-91-39/ 9MWD 92-01-10, FWD).
- (2) As a consequence of violation referred to in Part (1) above, furloughed Claimant D.G. Roberts shall "...be compensated eight (8) hours a day at this positions straight time rate of pay and a time and one-half rate for any time worked outside regularly assigned working hours commencing October 27, 1991 continuing until violation ceases, and that carrier now bulletin this position in conformance with Fort Worth and Denver Agreement Rule 12. ****"

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.

At issue in this case is the operation of Carrier's Motor Grader BNX 2500034 beginning September 30, 1991. It is the position of the Organization that Carrier violated the Agreement when it failed to bulletin the position of Class 2 Machine Operator. The Organization maintains that the Motor Grader was used on a regular basis from September 30, 1991 forward. Once the time period exceeded thirty days, Carrier was obligated to advertise the position. By failing to advertise the vacancy as required by Rule 12(g), Carrier deprived Claimant of a legitimate work opportunity. Rule 12 (g) provides in pertinent part that new vacancies shall be assigned "to the senior unassigned employee of the class whether working in a lower class or furloughed account force reduction."

Carrier asserts that the motor grader at issue was used only sporadically, and that the work was performed on an occasional basis by the backhoe operator. Moreover, there was no position to bulletin, since the work at issue did not constitute even a temporary vacancy. Thus, Carrier could not have been in violation of Rule 12(g). Carrier's action was in concert with the composite service rule.

There is no evidence on the record before the Board that the work of operating the Motor Grader actually constituted either a temporary or full time position as anticipated by Rule 12 (g) of the Agreement. In a similar case, involving the same parties, decided by Public Law Board No. 4104, Award 29:

"... The sporadic use of the machinery does not mandate that Carrier establish a new position to operate the machine or the bulletining of such."

The Organization has not shown on this record that the work at issue was other than as Carrier has characterized it. Accordingly the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.