

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36221
Docket No. MW-35701
02-3-99-3-641

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
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to bulletin and assign a Group 3 (scarifier) Machine Operator position in accordance with Rule 20 and instead assigned Mr. D. E. Reed to operate the scarifier beginning July 7, 1997 and continuing (System File T-D-1438-B/MWB 97-12-18AH BNR).
- (2) As a consequence of the violation referred to in Part (1) above, compensation shall now be allowed to ‘... G. W. Jarvi (Employee No. 232876-3), Group 3 Machine Operator, and any subsequent Group 3 Machine Operator who is senior to the Claimant, for eight (8) hours straight time and all overtime hours beginning on July 7, 1997 and continuing until such time as the position is properly bulletined and assigned. ***”

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 were given due notice of hearing thereon.

For a portion of the 1997 maintenance season, Gang TP-03 performed work on tracks covered by Seniority District 12. During this time, a scarifier machine was

utilized. This dispute concerns the Organization's contention that the scarifier was operated for a period of more than 30 days and that the Carrier was in Rule violation by its failure to bulletin the position. The Carrier, conceding use of the scarifier, argues that the Organization failed to prove that it was in operation in excess of the 30-day period which would require the position to be bulletined.

Review of the claim handling procedure is of insufficient help to the Board to fashion a resolution.

The August 29, 1997 claim states that the scarifier was in operation with Gang TP-03 in District 12 from "July 7, 1997, and continuing." The initial Carrier response (a) identified the scarifier as BNX 42-0075 and stated it "was placed on bulletin BU9713 dated September 15, 1997," and (b) stated that payroll records do not find that [the employee identified by the Organization] operated this Scarifier during the claim period."

The only September 15, 1997 bulletin provided in the record was for a scarifier in another seniority district, with a report date of October 13, 1997. This obviously does not address the period and location covered by the claim.

As to operation of the scarifier by the employee identified by the Organization, this was reviewed in conference. According to the Organization, the Carrier conceded the employee "operated the Group 3 machine [scarifier] only from July 7, through August 6," without reference to the period thereafter. The Carrier's version of the review was that payroll records showed the employee working on "three distinct Group 3/4 jobs" during July-August, no one of which was for more than 30 days.

Two statements provided by the Organization were not as definitive as the Organization suggests. One was from the employee assigned to the scarifier, explaining how he was allegedly compensated therefor, and stating, "I do not recall the exact dates." The other, from another employee on Gang TP-03, states, "I don't remember the dates, but I believe July 7, 1977 through late September 1997 would be accurate." The first statement was undated, and the second was dated two years after the event.

As is evident from the above, there is no means provided for the Board to reconcile the various assertions, and the matter must therefore be dismissed. This is in contrast to the record provided in Third Division Award 36218, the reasoning in which is incorporated herein by reference.

AWARD

Claim dismissed.

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ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of September 2002.