

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36958
Docket No. MW-36015
04-3-00-3-116

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier directed and utilized Machine Operator R. J. Bond in the capacity of a laborer and then failed and refused to properly compensate him at his assigned rate of pay for all service beginning August 11, 1998 and continuing (System File R1.312/8-00360).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. J. Bond shall now be compensated for the wage difference between the laborer's rate of pay and his assigned machine operator's rate of pay for all straight time and time and one-half hours of service beginning August 11 and continuing through October 30, 1998.”

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.

On July 29, 1998, the Claimant was awarded and assigned the position of Group 4, Rank A Machine Operator on Production Crew 1 working at Glenwood, Minnesota, at \$15.29 per hour.

The Claimant was instructed to report to work with Production Crew 1 at Plummer, Minnesota, on August 11, 1998. According to the Organization, when the Claimant reported to Plummer, Gang Foreman Kriedeman assigned the Claimant to work as an extra gang Laborer at a rate lower than the Claimant's awarded Machine Operator position. According to the Carrier, the Claimant was not yet a qualified Machine Operator when he reported at Plummer; when the Claimant reported at Plummer he was advised that the gang had been split; and the Claimant elected to remain as a Laborer at Plummer rather than reporting to the tie gang on the Elbow Lake Subdivision where the Machine Operator positions were assigned, thereby forfeiting his Machine Operator entitlements.

As set forth in the claim, the Organization argues that the Claimant is entitled to the difference in pay between the Machine Operator and Laborer positions for the period August 11 through October 30, 1998. There is obviously a factual dispute concerning what happened after the Claimant reported at Plummer to protect his awarded Machine Operator position. The Organization contends that the Claimant was instructed to work at the lower paying Laborer position and the Carrier contends that the Claimant was advised that the gang had been split and the Claimant elected to remain at Plummer as a Laborer rather than reporting to Elbow Lake where he could protect a Machine Operator position. Because of that factual dispute and because the burden is on the Organization to demonstrate the necessary facts to substantiate its position, we cannot find that the Organization carried its burden and that the Claimant is entitled to relief for the entire period claimed. From this record, we just do not know why the Claimant worked as a Laborer after he reported at Plummer.

However, notwithstanding the factual dispute concerning why the Claimant worked as a Laborer after reporting to work as a Machine Operator at Plummer, the facts as presented by the Carrier show that the Claimant was awarded a

Machine Operator position; he was instructed to report at Plummer; and, when he did so, there was no Machine Operator position at Plummer for the Claimant. Therefore, the record sufficiently shows that the Carrier abolished the Machine Operator position at Plummer. But Rule 12(d) requires that "[n]ot less than five (5) working days' advance notice will be given to regularly assigned employees . . . whose positions are to be abolished before such reduction in forces are made. . . ." Under the circumstances and assuming as the Carrier contends that it split the crew, the Machine Operator position at Plummer was abolished and the Claimant was not given five days' advance notice of that abolishment. As a remedy, the Claimant shall be entitled to the difference in pay between the Machine Operator and Laborer positions, but only for five days.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 21st day of April 2004.