

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41580
Docket No. MW-41428
13-3-NRAB-00003-100347**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to re-bulletin a machine operator position for Ballast Regulator Machine CR9601 on Gang 5765 and when it improperly assigned Truck Operator B. Meyer to operate said machine on the Moffat Tunnel Subdivision commencing on May 12, 2009 and continuing (System File D-09-32/1522916).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Seasword shall ‘. . . now be compensated, an equal and proportionate share of any and all straight time and overtime hours, at his respective rate(s) of pay, worked by Truck Driver Meyer, commencing on May 12, 2009 and continuing.’”**

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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to re-bulletin a vacant ballast regulator position, and instead improperly assigned a Truck Operator to said machine.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier's violations of the Agreement definitely deprived the Claimant of the benefit of his seniority in filling the vacant ballast regulator position (2) the Carrier violated the Agreement by assigning a Truck Operator to the position rather than bulletining or otherwise allowing the Claimant to exercise his seniority to the position (3) there is no merit to the Carrier's defenses, and (4) the Claimant is entitled to the requested remedy. The Carrier counters that the claim should be denied in its entirety because (1) the Carrier properly bulletined the position (2) the Carrier properly filled the temporary vacancy in accordance with the terms of the Agreement, and (3) the Organization failed to meet its burden of proof.

The Board carefully reviewed the record and finds that the Organization failed to meet its burden to prove that the Agreement was violated when the Carrier did not re-bulletin a Machine Operator position for the ballast regulator on Gang 5765 and later assigned a Truck Operator to operate that machine.

It is clear from the record that the machine in question was not operated for more than 30 days. The Carrier is not required to re-bulletin a position unless there is work performed in excess of 30 calendar days. The initial claim indicated that the machine was operated from May 12 to May 22, 2009. It was then operated from June 8 through June 12 and again from June 15 through June 18. The Claimant

decided to attempt to displace the position when his position was abolished on May 29, 2009.

The record also reveals that the Carrier attempted to fill the position and was unsuccessful in finding people to bid on it. As noted above, the Carrier is not required to re-bulletin a position unless work is performed in excess of 30 days.

The Organization failed to meet its burden of proof in this case. Therefore, the claim must be 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.

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

Dated at Chicago, Illinois, this 18th day of March 2013.