Award No. 5346
Docket No. MW-5217

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Commitee of the Brotherhood:

(1) That the Carrier violated the Agreement by calling a junior work equipment operator to perform work on Sunday, May 16, 1948, at Boston, Massachusetts and did not call the senior work equipment operator who was stationed at the same point.

(2) That Work Equipment Operator D. W. True be reimbursed for the wages lost on account of the Carrier's violation of the agreement referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to Sunday, May 16, 1948, the Carrier had two (2) Cranes stationed, and working, in the Boston Terminal area, Boston, Massachusetts.

The senior crane operator, D. W. True, operated Crane W-3304 and the junior crane operator, Z. H. Eldridge, operated Crane W-3346.

The two machines are of the same type and are used to perform similar work.

On Sunday, May 16, 1948, it was necessary to use one of these cranes in Yard No. 20 in the Boston Terminal area.

The Carrier called operator Z. H. Eldridge, the junior operator, to perform the necessary work.

Claim on behalf of Senior Operator D. W. True, who was adversely affected, was filed with the Carrier and claim was declined.

The agreement in effect between the two parties to this dispute dated May 15, 1942, and subsequent amendments and interpretations, are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1 of the effective agreement reads as follows:

"1—SENIORITY—EFFECTIVE DATE. Seniority begins at the time the employes' pay starts in the class in the sub-department on their seniority districts. An employe awarded an advertised

Management which piece of equipment shall be used on a specific project. Carrier has not delegated this prerogative to any one, either by rule or practice, and it does not intend to do so.

SUMMARY:

Carrier has conclusively shown above that:

(1) The only rule offered in support of claim in this Docket (Rule 2) is inapplicable.

(2) It has not been the practice to always use the senior employe of a seniority group for overtime or extra service.

(3) It is Carrier's prerogative to determine what equipment shall be used on any particular job.

(4) It is the practice to post for bid and assign the operation of specific cranes to individual operators.

(5) It is the practice to use the assigned operator, if available, when a specific crane is used.

(6) The assigned operator of Crane W-3346 was Z. H. Eldridge and he was used on Sunday, May 16, 1948.

(7) Claimant D. W. True has failed to work overtime on several occasions.

There is no merit in the claim in this Docket and it should be denied.

OPINION OF BOARD: On Sunday, May 16, 1948 it was necessary to use a crane to clean up some work in the Boston Terminal area. The Track Supervisor having jurisdiction over that area was instructed to use Crane No. W-3346 for that purpose and Z. H. Eldridge, assigned Operator of that crane, was used in the performance of the work. Claimant, who was senior to Eldridge, was assigned to the operation of Crane No. W-3304 and claims that he was entitled to preference in the performance of this overtime work. It is conceded by both parties that Crane Operators bid in and are assigned to operate specific cranes.

Despite Carrier's contention to the contrary, it is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class (see Awards 4200, 4531 and others). It is also a well-established principle that overtime work arising out of a particular position belongs to the occupant of that position. The two principles are not in conflict. The first is merely qualified to that extent by the second. Inasmuch as the work of the position which Mr. Eldridge occupied was the operation of Crane No. W-3346 and that was the crane used on the Sunday in question, the overtime would be properly assignable to him unless the Carrier arbitrarily assigned that particular piece of equipment with its Operator to perform the work in question for the purpose of defeating the senior employe's right to preference for overtime work. QUOTE ( )

In our Opinion it is incontrovertible that the choice of what piece of equipment is to be used for the accomplishment of a given task is a matter of managerial discretion. If that choice is challenged by the Employes, the burden is upon them to show by clear and convincing evidence that Carrier has arbitrarily exercised its judgment in an attempt to evade the application of the Agreement. Here, the Employes assert that the two cranes were both available and of the same type and, hence, the senior employe and his crane should have been used. Without laboring the question as to whether or not the cranes were of the same "type", we observe that the crane used

was powered by a diesel engine and the other by a gasoline engine. The crane used was normally assigned to the jurisdiction of Track Supervisor Quigley, under whose jurisdiction the work on the Sunday involved was performed, whereas the other crane was assigned to another Track Supervisor and was used during the preceding week on a day to day basis under Mr. Quigley's charge pending the return of that Track Supervisor from Revere. It is asserted by Carrier that, under the circumstances, it was decided by those responsible for the work that Crane No. W-3346 was better suited for its performance. We find no affirmative proof of record adduced by the Employes to indicate that this decision was not in the exercise of reasonable managerial discretion. Accordingly, the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of April, 1951.