

Award No. 13220

Docket No. CL-13128

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5130) that:

1. The Carrier violated Rules 1, 2, 3, 5, 6, 19 and 23 (among others) of the January 1, 1938 Agreement in failing to call and use senior furloughed Group employe Willie Green to operate fork lift at Miller Shops, St. Augustine, on June 12, 13 and 15, 1961 but instead used a Group 1 employe in a separate seniority district to operate this machine on dates shown, and that:
2. The Carrier shall now be required to compensate Willie Green for three day's pay on account of violation of his seniority rights.

EMPLOYEES' STATEMENT OF FACTS: On June 12, 13 and 15, 1961, Gang Foreman Worley Mier, a Group 1 employe, was permitted to operate the fork lift at St. Augustine Miller Shops, work that is assigned to and performed regularly and exclusively by Group 3 employes, in a separate seniority district. As there were no other Group 3 employes working on dates in question who were qualified to operate this machine the senior qualified furloughed Group 3 employe, Willie Green, should have been called and used.

On June 28, 1961, the District Chairman of the Brotherhood filed claim with Storekeeper H. A. Germain in behalf of Group 3 employe Willie Green for a day's pay on each of the days that the Group 1 employe was used in the performance of Group 3 work. On July 18, 1961, Storekeeper Germain declined the claim, and on August 8, 1961 his decision was appealed by the District Chairman to Manager of Stores L. W. Flynt, in letter reading:

"Under date of June 28, 1961, I wrote Mr. H. A. Germain, Storekeeper as follows:

Claim is hereby filed for three day's pay on behalf of senior furloughed employe, laborer Willie Green.

I find Gang Foreman Mr. Worley Mier operated the electric hoister on June 12, 13 and 15, 1961. In the absence of the regular operator, Leroy Scott, senior furloughed employe should have been called to perform this work.

Third Division Award 6140 rendered with the assistance of Referee Dudley E. Whiting, also supports fully the Railway's position in the instant claim that the rules cited do not give to Group 3 laborers the exclusive right to operate fork lift trucks, it being found in the Opinion of the Board in that Award that:

"Rule 1(a) defines the three groups of employes covered by the Agreement. Group 3 consists of laborers employes in and around offices, stations, storehouses, warehouses, and so forth. Group 1 consists of employes who regularly devote not less than four hours per day to certain specified clerical duties. Neither that rule nor any other rule prohibits the performance of manual labor by Group 1 employe nor specifically reserves the performance of all manual labor to Group 3 employes . . ." (Emphasis ours.)

For the reasons stated the claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier's principal storeroom is located at St. Augustine, Florida, where materials and supplies are stored until such time as they are needed. Laborers (Group 3 employes) are employed at the Stores Department and perform work necessary in loading and unloading material from freight cars and storing it in the proper location in the storeroom. Fork lift trucks are used by qualified Group 3 employes in the handling of the materials, for which work the operator receives a differential of three cents per hour.

On the three dates involved in the claim, one of the two regular fork lift truck operators was on vacation. The remaining laborers working were not qualified to operate the fork lift trucks, and Gang Foreman Mier (a Group 1 employe under the Clerks' Agreement) operated one of the lift trucks one hour on June 12 and 13, and two hours on June 15. A qualified Group 3 employe operated the second fork lift truck.

Because of the Gang Foreman (Group 1) having operated the lift truck one hour each day on June 12 and 13, and two hours on June 15, 1961, the Organization initiated claim in behalf of the senior furloughed laborer, Willie Green, for three days' pay, which claim was handled in the usual manner on the property and denied.

The issue presented by the foregoing facts is whether a Group 1 employe properly may be used to perform some Group 3 work under the controlling Scope Rule and seniority rules of the Agreement.

This Board has held on many occasions that rules similar to and more often identical with the rules here cited and relied on by the Employes do not prohibit performance of work of a lower classification by a higher rated employe. (See Awards 2011, 6140, 7167, 9047, and 13218 the latter with this Referee participating). Award 2354, relied on by the Employes, involved a dispute between these same parties but is distinguishable on the facts. There a Group 3 position was abolished and the remaining work thereof was assigned to a Group 1 employe. Here no position was abolished and no work was re-assigned. There the Board found on the facts that the work was transferred from one seniority district to another. Here it is clearly established that the Group 1 and Group 3 employes involved were on separate rosters but within the same seniority district. Hence there was no removal of work from one

seniority district and assignment to employes of another.

In view of the foregoing the Board will follow the findings of the precedential awards heretofore cited and deny this claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January 1965.