

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Edward A. Lynch, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on March 10 and 11, 1964, it assigned or otherwise permitted Supervisor C. J. Leach to make repairs on Hydraulic Production Tamper R-23 at Moody, Oregon. (System Case No. MW-151.)

(2) Roadway Equipment Repair and Operation Department Mechanics C. Anderson and R. D. Robertson each be allowed pay at their respective straight time and time and one-half rates for an equal proportionate share of the total number of hours expended by Supervisor C. J. Leach in performing the service referred to in Part (1) of this claim.

* **EMPLOYEES' STATEMENT OF FACTS:** On March 9, 1964, the machine operator assigned to Hydraulic Production Tamper R-23, working out of Moody, Oregon, notified the Carrier's Roadway Equipment Repair and Operation Department Shop located at Vancouver, Washington, through Department Supervisor C. J. Leach, that his machine had developed a mechanical failure, presumably in the beam line, which would affect proper sighting for surfacing track.

Supervisor Leach proceeded to Moody on the following day, March 10, 1964, and, after spending approximately five (5) hours testing and tracing the electrical wires, located a broken wire in the beam line. In order to make necessary repairs, Supervisor Leach drove to a nearby town, (The Dalles, Oregon) secured a soldering iron, spent the night there and returned to Moody, Oregon on the morning of March 11, 1964. Supervisor Leach completed the repairs and then observed the machine in operation in order to determine if there were any further malfunctioning. None was observed.

Claimants C. Anderson and R. D. Robertson have established and hold seniority as mechanics in the Roadway Equipment Repair and Operation Department and are skilled in the repair of roadway machine equipment, such as is involved in this dispute.

Claimant Robertson on March 10 went on duty at Vancouver at 7:30 A. M. and was sent to Salem, Oregon, some 150 miles from Moody, to repair other roadway equipment, following which he returned to Vancouver and went off duty at 5:00 P. M. On March 11 he worked as mechanic in Vancouver shop from 7:30 A. M. to 4:00 P. M.

(Exhibits not reproduced.)

OPINION OF BOARD: We are here concerned with this portion of Rule 40 of the Agreement:

"All work on Operating property, as classified in this Agreement, shall be performed by employees covered by this Agreement, unless by mutual agreement between the General Chairman and designated Representative of Management, it is agreed that certain jobs may be contracted to outside parties account inability of the railroad due to lack of equipment, qualified forces or other reasons to perform such work with its own forces . . ."

Rule 41 provides:

"Roadway Machinery Equipment and Automotive Repair Department forces will be composed of the following classes of employees as the nature of the work requires:

1st—Mechanics are those men performing work of building, repairing, dismantling or adjusting roadway machine equipment and machinery, automotive equipment, and responsible for such work . . ."

Involved here is Hydraulic Production Tamper R-23 which developed a mechanical failure.

The parties are agreed that Carrier's Supervisor was properly advised. Organization says this occurred March 9; Carrier says it was March 10. Suffice it to say the Supervisor was notified, and on March 10 proceeded to Moody to inspect the machine. He was at the site of the machine March 10 and 11. The operator of the machine states the Supervisor arrived that afternoon "and we worked together for 5 hours (March 10) trying to locate our troubles [sic] of which we never found 'till near quitting time . . . there were some broken electric wires in the beam line . . . He checked out all of the wires then and discovered other bad looking places and he soldered all of them. Then he worked with us on the passing track at Moody to see if the wires were OK. This all took 4 hours the next day which was March 11. "So you might say we discovered our troubles on March 10, which we spent 5 hrs. testing, taking apart, and examining electric wires, etc. And he came back the 11th (March) and we went right to work on the cause."

It is the position of the Organization that Carrier violated the Agreement when it used a "supervisory employee (inspector) who holds no seniority under that agreement to perform the work necessary to the repairing of Machine R-23.

The position of the Organization is correct. The Tamper involved is "roadway machine equipment," within the meaning and intent of Rule 41 and mechanics should have been called and used.

We will, therefore, sustain part 1 of the claim.

With respect to Part 2 of the claim, it is argued, in behalf of Claimants Anderson and Robertson, that "the fact that Claimants were employed on the dates in question is of no concern here and this Board has so consistently denied such arguments that it should not need much attention here."

We disagree. This Board cannot ignore a decision of the Supreme Court of the United States. (Gunther v. San Diego & Eastern Ry. Co., 382 U.S. 257 (1965)).

The Claimants are entitled to be made whole for such wage loss, if any, incurred as a result of Carrier's action.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated.

AWARD

Claim of rules violation is sustained; claim for compensation sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1966.