

Award No. 16814
Docket No. MW-17556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE & NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, beginning January 27, 1967, it refused to permit Machine Operator C. E. Brooks to accompany and to operate Burro Crane No. 2562 when shipped to the welding plant at Radnor, Tennessee.

(2) Machine Operator C. E. Brooks now be allowed pay at his time and one-half rate for the number of hours Burro Crane No. 2562 was operated by others on and after January 27, 1967.

EMPLOYEES' STATEMENT OF FACTS: The claimant had established and held seniority as a crane operator in Rank No. 3 of the Track Subdepartment. He was regularly assigned to the system service position of operator of Burro Crane No. 2562 by Bulletin No. 24, dated February 6, 1963.

Prior to January 27, 1967, the claimant was operating Burro Crane No. 2562 with Gang No. 29 on the Cincinnati Division. Effective January 27, 1967, the Carrier shipped said crane to Radnor, Tennessee for use at the welding plant. Effective that same date, the Carrier suspended the claimant from his position of operator of the crane and thereafter used him to perform other work in the Track Subdepartment. The work of operating the crane at the welding plant was temporarily assigned to another employe, who, in addition to a regular eight (8) hour work period, was used to perform a substantial amount of overtime service.

The claimant was qualified and willing to accompany and operate the crane while it was assigned to and used at the welding plant on the Nashville Division, but the Carrier refused to permit him to do so.

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On January 27, 1967, Burro Crane No. 2562, which was on the Cincinnati Division, was shipped to Carrier's welding plant at Nashville, Tennessee.

C. E. Brooks was the assigned operator on the Cincinnati Division, having secured the position by bid. He was not sent with the crane. While the crane was working at Nashville, Mr. Brooks was used in other service, but paid at the crane operator's rate.

Employees alleged that Rule 11(c) of the Agreement was violated when Mr. Brooks was not sent with the crane and filed a claim in his behalf. Carrier saw no basis for the claim and it was declined. Attached Exhibits A through D show pertinent correspondence exchanged in connection with the claim.

A copy of the current working rules agreement is on file with the Third Division and it by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was an employee regularly assigned to the System Service Position of operator of Burro Crane No. 2562. He held seniority in Rank No. 3 of the Track Subdepartment. Claimant was operating on the Cincinnati Division of the Carrier. Effective January 27, 1967 Carrier shipped Burro Crane No. 2562 to Radnor, Tennessee with the Nashville Division for use at a welding plant at that point.

It is the position of the Claimant that the action of the Carrier violated the Agreement when it failed to transfer Claimant with his crane to Radnor, Tennessee but instead transferred an employee from another crane to work Claimant's position as operator of Burro Crane No. 2562.

Rule 11 of the Agreement is headed **System Service Employees**. 11(a) defines System Service Employees and includes operators of machines listed in rank 3 which includes the Claimant. 11(b) sets out the remuneration System Service Employees are to receive when off their Superintendent's Division. Rule 11(c) reads as follows:

"11(c) Position as operator of machines listed, by reference, in section (a) of this rule will be bulletined and assigned to home seniority districts and divisions respectively. When operators' positions on system service machines are abolished, such abolishment will be done by the Division Engineer who established the positions by bulletin. Operators of machines, listed as system service machines, or electric welders and electric welder helpers, will hold seniority on their home seniority district only, but may be worked on other seniority districts."

As stated above Claimant held the System Service position of operator of Burro Crane No. 2562. This position was the Claimant's until such time as he either relinquished same, was properly displaced or the position was properly abolished. Under Rule 11(c) the Carrier had the right to transfer the

Claimant with his crane to another seniority district. The Carrier elected not to do this. This was its prerogative. However, if the Carrier does not elect to transfer Claimant it must follow the alternative procedure of abolishing the

position. The Carrier may not summarily deprive the Claimant of his position as operator of Burro Crane No. 2562. In doing so the Carrier violated the Agreement. We will sustain the 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 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November 1968.