



Award Number 17559

Docket Number MW-17349

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

- (1) The Carrier violated the Agreement when it called and used Track Laborer Aguilar to perform roadway machine operator's work during overtime hours on January 13, 1966 instead of using Mr. J. Martinez to perform said work. (System Case No. TG-1-66/VM-1-66)
- (2) Mr. J. Martinez now be allowed seven and one-half (7 1/2) hours' pay at the roadway machine operator's time and one-half rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On the evening of January 13, 1966, the Carrier attempted to call the regular assigned roadway machine operators working on the Gary Division to perform work of that class at South Chicago, Illinois. However, the Carrier did not contact a sufficient number to meet its requirements. The Carrier then called Track Laborer Aguilar, Account No. 59534, who holds no seniority as a roadway machine operator, to perform roadway machine operator's work at said location. Mr. Aguilar worked seven (7) and one-half hours and was compensated therefor at the roadway machine operator's time and one-half rate.

The claimant was employed as a regularly assigned truck driver at South Chicago, Illinois. He has established and holds seniority rights as a roadway machine operator on the Gary Division.

The claimant's ability and availability to perform the subject work have not been questioned by the Carrier.

Claim was timely and properly presented and handled by the Employees 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 August 1, 1952, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The Claimant, Mr. J. Martinez, was employed as a Truck Driver in the Scales and Work Equipment Sub-department, Gary Division, at the time this claim arose. On the night of January 13, 1966, claim date, the Carrier needed several additional Road-

"OVERTIME

"Rule 28.

"(b) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee

* * *

(Exhibits Not Reproduced)

OPINION OF BOARD: Carrier needed additional Roadway Machine Operators because of extreme weather conditions. All of the regularly assigned Roadway Machine Operators working in the Track Sub-department were called. Being unable to obtain a sufficient number, Carrier then called a track laborer regularly assigned and working in the Track Sub-department.

Claimant argues that he should have been called because he held seniority rights in the Roadway Machine Operator's Group in the Track Sub-department.

Carrier counter-argues that while Claimant held seniority rights in the Roadway Machinery Operator's Group in the Track Sub-department he nevertheless had no right to be called since he had transferred from the Track Sub-department to the Scales and Work Equipment Sub-department.

In support of its argument, Carrier cites Rule 4 which provides as follows:

"Rule 4. Seniority rights of all employees are confined to the sub-department and group in which employed, except as otherwise provided herein. The sub-departments are as follows:

1. Bridge and Building.
2. Track.
3. Scales and Work Equipment.

Claimant relies on Rule 6(b) which provides in pertinent part as follows:

"(b) Vacancies or new positions, . . . in the Scales and Work Equipment sub-department will be filled first by employees holding seniority in the group and rank in which the vacancy or new position occurs. If not so filled, they will be filled by qualified employees in succeeding lower ranks in that sub-department. In the event the vacancies or new positions are not so filled by employees in the Scales and Work Equipment sub-department, they will be filled by qualified employees desiring same from the Bridge and Building sub-department and the Track sub-department in that order before hiring a new employee. Employees so assigned will retain their seniority rights in the respective other groups and sub-departments from which taken. (Emphasis added)

From a reading of Rule 6(b) it is seen that an exception to the statement of Rule 4 that seniority rights shall be confined to the sub-department and group in which employed is thus created. Furthermore, the language of Rule 6(b) is clear and unambiguous. It clearly permits Claimant to simul-

ment of Rule 4 that seniority rights shall be confined to the sub-departmentally maintain seniority rights in the Track sub-department from which he transferred and in the Scales and Work Equipment sub-department where he is currently employed. Moreover, there is nothing in the context or language of the rules limiting or restricting such an employee's seniority rights in either sub-department.

Consequently, under Rule 3 which provides that rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their length of service and under Rule 6(a) providing that vacancies or new positions will be filled first by employees holding seniority in the group and rank in which the vacancy or new position occurs, Claimant should have been called since he had seniority.

The claim is therefore sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.