

Award No. 18808
Docket No. MW-19246

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned Supervisor Clark instead of Machine Operator P. E. Belcher to operate Speed Swing HTC-2 at Carbondale, Illinois on February 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1969. (System File SLN-90-M-69/Case 641)

(2) Machine Operator P. E. Belcher be allowed 120 hours' pay at the Speed Swing operator's rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant P. E. Belcher is a regularly assigned machine operator within the Carrier's Roadway Machine Department.

On the dates involved here, the Carrier desired to use Speed Swing HTC-2 in connection with the performance of clean up and drainage work in its Carbondale Yards. Instead of assigning the claimant to perform the work of operating the speed swing, the Carrier assigned Supervisor Clark thereto.

The assignment of Supervisor Clark to perform scope covered work in preference to the claimant, as available and fully qualified machine operator, was in violation of Rule 1 which reads:

"This schedule governs hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, except:

- (a) Signal Department employees.
- (b) Clerical forces.
- (c) Engineering forces.
- (d) Scale Department employees.
- (e) Water Works Foremen, repair men and helpers.

- (f) Telephone and Telegraph Maintenance employees.
- (g) Bridge Inspectors assigned to more than one division.
- (h) Supervisory forces above the rank of foremen.
- (i) Teams and drivers, owners of teams, or men placed in charge of teams by owners.
- (j) Any other employees (pending final decision) over whom there is jurisdictional dispute.
- (k) Individuals paid less than \$30 per month for special service which takes only part of their time from outside employment or business.
- (l) Division Gardners."

Copies of correspondence exchanged by the parties during the handling on the property are attached hereto as Employees' Exhibit "A."

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 September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: During February, 1969, the company was involved in programmed maintenance on the St. Louis Division near Carbondale, Illinois. All machine operators on the division were operating machines. It was necessary to operate a Speed Swing to clean and drain the yard at Carbondale, Illinois at this time. The company asked several machine operators if they desired to perform the work assignment, but all declined. The claimant was working on a highway truck crane during the claim period and was not available for the assignment. In order to avoid delays to the work, a supervisor, Mr. Clark, operated the machine on the claim dates.

The correspondence is attached as Company's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: It is so well settled as to require no citation that supervisory personnel outside the scope of the Agreement may not be used to perform work of employees covered by the Agreement.

The contentions of the Carrier that the claim is procedurally defective are not persuasive. When the claim was submitted to the Division Engineer, the General Chairman stated:

"This claim is because track supervisor consistently has operated Speed Swing HTC-2, a Group 1 machine. Supervisor Clark operated HTC-2 on February 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17,

18, 19, 20 and 21. Supervisor Clark operated HTC-2 in cleaning and draining tracks in the Carbondale yard.

Claim is presented that P. E. Belcher now be paid, in addition to all other earnings, eight (8) hours at Speed Swing operators' rate for each of the above enumerated dates."

The General Chairman was specific in stating the reason for the claim and the specific amount claimed. The Carrier could not have been misled.

There is no showing that the work was of an emergency nature or that it could not have been scheduled in a manner that it could be performed by Agreement-covered employees. See Awards 12671, 13832, 14061, 14621, and 15497. The claim will be 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.