

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20861
Docket Number MW-20924

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when the Carrier failed and refused to allow Henry Bowie the Class 3 machine operator's rate of pay for all services performed on February 26, 27, 28, March 1 and 2, 1973 /System File C-4 H. Bowie/12-35 (73-3) E-3/

(2) The Carrier now be required to pay to Claimant Bowie the difference between what he should have been paid at the Class 3 machine operator's rate and what he was paid at the trackman's rate for 40 hours of straight-time work and for 14 hours of overtime work during the period specified in Part (1) above.

OPINION OF BOARD: Claimant had a seniority date of October 11, 1948 as a trackman. He had established seniority as a track machine operator in the Track Department on July 19, 1962. Prior to February 26, 1973 Claimant was assigned as a trackman.

A position of track machine operator was advertised from January 27 through February 6, 1973, and Claimant was the successful bidder. A bulletin was issued by the Carrier on February 9, 1973 awarding the position to Claimant with the assignment to be effective February 26, 1973. Claimant was not permitted to take the assignment effective February 26, 1973, but on instructions of the Roadmaster he continued working as a trackman February 26 through Friday March 2nd, during which period he worked forty hours straight time and fourteen hours overtime; he started to work as a track machine operator on March 5th. Petitioner's contention is that he should have been paid for the service February 26 through March 2nd at the machine operator's rate rather than at the trackman's rate.

Based on the entire record of this dispute, it is our conclusion that the claim must be sustained. While the rules of the Agreement contain no specific provisions as to when actual assignments to positions are to be effective, in this case the Carrier, by its bulletin of February 9, 1973 made the assignment effective February 26, 1973. Claimant was entitled to the track machine operator's rate effective that date, and that rate would also be applicable to any overtime service (see Awards 17618, 18945 and 19458).

The Carrier argues that Claimant was instructed to continue as a trackman for the week in question due to an emergency situation in the area caused by storms and a derailment, and Carrier cites awards to the effect that Carriers have latitude in assigning employees to meet emergency situations. We agree with those Awards which spell out Carrier perogatives in using employees in emergency situations, but no awards have been cited which hold that employees were required to work at a lower rate of pay than the rate of their assignment in order to meet an emergency. Thus it is our finding that the Claim must 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1975.