NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22005
THIRD DIVISION Docket Number MW-22024

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Chicago, Rock Island and Pacific Railroad Company
((William M. Gibbons, Trustee)

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

(1) The Agreement was violated when, from December 1 to December 14, 1975, Machine Operators T. P. Redmond and J. J. Hagan were required to suspend work from their positions as such and Maintenance Gang Foreman Leggins was assigned to perform machine operator's work (System File L-126-1536/11-0-400).

(2) As a consequence of the aforesaid violation, Machine Operators T. P. Redmond and J. J. Hagan shall each now be allowed forty (40) hours' pay at their respective straight-time rates.

OPINION OF BOARD: Rule 1, Group 14, Paragraph 7 provides:

> "When there are no employees holding seniority in Group 14 available for temporary positions or vacancies of 30 days or less duration in that group, the senior employees in Group 13 on the district where the temporary vacancy occurs will be notified and granted the opportunity to qualify and fill such temporary positions without affecting their seniority rights in Group 13."

The Claimants are regularly assigned Machine Operators within Group 14.

During certain times between December 1 and 14, 1975, they were instructed to suspend the work of their positions and perform service as Track Laborers. During the same period of time, a Maintenance Gang Foreman operated a back hoe machine. One of the groups of employes designated in Group 14 is Back Hoe Operators.

The Organization maintains that the Claimants are Machine Operators and when the Carrier suspended the work of their positions, they were available to operate the back hoe as a Group 14 machine.

The Carrier contends that the Composite Service Rule permits assignments as provided in this case. However, the organization asserts that the Composite Service Rule does not grant authority to the Carrier to invalidate the seniority rules of the Agreement by removing work from one seniority group to another.

The Organization urges that in this case the principle must be preserved that an employe without seniority to operate a Group 14 machine may not be utilized.

It is understood that both Claimants could not operate the back hoe on the same day. It is also recognized that on certain dates, the Claimants were operating their own machines and would not have been available to operate the back hoe. However, in some instances the senior Claimant may have been operating his regular machine while the junior Claimant was, in fact, available to operate the back hoe.

It is held that Paragraph 1 of the Claim is sustained for the reason that the Carrier did not abide by Rule 1, Group 14, Paragraph 7.

Paragraph 2 of the Claim seeks compensation for each Claimant in the amount of 40 hours. There is no basis for this type of an award.

It is held that the senior Claimant is entitled to the difference in the rate of pay he received for the work performed on the dates in question and the rate of pay for a Back Hoe Operator on those dates when he was not operating his regularly assigned machine and was available to operate the back hoe. It is further held that the junior Claimant is entitled to receive the same measure of compensation on those dates when he was available and the senior Claimant was unavailable.

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 1 sustained.

Claim 2 sustained as per Opinion, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.