

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22294
Docket Number MW-22069

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when, on November 29 and 30, 1975, it used R. Gray to operate the machine assigned by bulletin to Machine Operator R. Gartner (System File TERRA 1975-29/013-293-13).

(2) Machine Operator R. Gartner be allowed sixteen (16) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: At issue is the operation of a certain piece of machinery by a person other than the Claimant on days other than those regularly scheduled. The Organization contends the Claimant was bulletined to and did operate a "Speed Swing" machine on his regular days -- Monday through Friday. There came a need to operate such equipment on November 29 and 30, 1975 -- a Saturday and Sunday. (Operation was to help clear coal spillage caused by a derailment). The Carrier used another machine operator, senior in service to the Claimant, to operate such equipment. The Organization's principle contention on the property was that the person used to operate such machine was a supervisor. The record would indicate that, notwithstanding a series of assertions by the Organization on the property, no proof on its part was ever adduced to support such a claim.

Of relevance here is the proper application and interpretation of Rule 31 (f) and (g):

"(f) 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 hours of work that week; in all other cases by the regular employee.

"(g) Overtime work required following and continuing with the regular eight (8) hour work period shall be performed by the necessary senior employees working on the job.

Senior available employees will be given preference in performing overtime work on call basis within the jurisdiction of their respective seniority groups (gang involved in Track Sub-Department). This not to interfere with work on unassigned days covered by Paragraph (f) of this Rule."

What is key is the matter of the "regular employee" as stated in Rule 31 (f). The Organization contends that the Claimant is bulletined to and regularly operates the "Speed Swing" machine used in the work in question; the Carrier points to the Bulletin announcing the position and to the Award of the position which in both cases, was that of "Machine Operator." Notwithstanding assertions by the Organization that the question of whether or not the Claimant was bulletined specifically to the "Speed Swing" was not raised on the property, correspondence between the parties on the property support the fact that the Claimant was identified as a "machine operator" by the Organization as well as the other employee. Carrier correspondence in that regard also identified the other employee as receiving "large machine operator's pay." In point of fact, the Organization's emphasis on the property was the unsubstantiated claim that the employee to whom such work was assigned was a supervisor. Nothing in the record now substantiates the contention that the Claimant was specifically bulletined to operate the "Speed Swing" machine to the exclusion of others. It thus cannot be said that he was the regular employee on such equipment within the meaning of Rule 31 (f) of the Agreement.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1979.