

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22356
Docket Number MW-22133

Robert A. Franden, Referee

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

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

(1) The Carrier violated the Agreement when, on August 26, 27, September 2, 3, 4, 1975 and on dates subsequent thereto, it assigned and used a Track Subdepartment employee to fill a temporary machine helper's position (helper - Gradall Machine #3, Force No. 9014) in the Maintenance of Way-General Subdepartment instead of recalling and using furloughed Machine Helper Dexter Gaymon /System File 12-8 (76-1)/.

(2) As a consequence of the aforesaid violation, Furloughed Machine Helper Dexter Gaymon shall be allowed eight (8) hours of pay at the machine helper's straight-time rate for each of the dates specified in Part (1) hereof and for each date subsequent thereto on which a Track Subdepartment employee was used to fill the machine helper's position on Gradall Machine #3, Force No. 9014."

OPINION OF BOARD: The Organization has alleged that on the claim dates the Carrier violated the Agreement by using employees not holding seniority in the general sub-department to do work reserved to employees holding seniority in that sub-department, to wit: the work of a helper on a Gradall machine. It is further alleged that under Section 2 of Rule 8 of the controlling Agreement the claimant as a furloughed Group A Rank 3 Helper should have been called to perform the work.

The Carrier argues that the work in question is not exclusively reserved to the general sub-department in that the work in question is not Operator or Helper work.

Rule 5 creating seniority groups and ranks reads as follows:

"RULE 5

SENIORITY GROUPS AND RANKS

Section 1

The seniority rights of employees shall be confined to seniority districts as set forth in Rule 4 and to sub-departments and groups as shown below. The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank and the highest number the lowest rank in the group.

Track Subdepartment

<u>Group A</u>	<u>Seniority Districts</u>
Rank 1--Foreman; Foremen)
Inspectors)
Rank 2--Assistant Foremen)
Rank 3--Apprentice Foremen)
Rank 4--Machine Operators -)
Class I, II and III)
Machines)
)
NOTE: Employees in Ranks 1, 2) District, except
and 3 will not establish) System Rail Gang.
seniority in Rank 4 until) See Rule 6,
such time as assigned to) Section 5.
a position in this Rank)
as provided in Rule 6,)
Section 6, and the pro-)
visions of Rule 6, Sec-)
tion 3, will not apply.)
)
Rank 5--Helpers)
Rank 6--Trackmen)

* * *

Maintenance of Way - General Subdepartment Seniority Districts

Group A--Roadway Machines

Rank 1--Foremen) District.
Rank 2--Machine Operators) See Rule 6,
Rank 3--Firemen; Helpers; Oilers) Section 4.

The following machines or similar machines shall be considered as being in this Group A and shall be filled as provided in Rule 8, Section 9: Draglines; Grading Equipment; Ditchers; Pile Drivers; Burro Cranes; Jordan Ditcher and Spreader; Fireline Plows - Crawler Type; Bulldozers; Euclid Earth Movers; Power Shovels; Motor Graders; and Gradall.

NOTE: Seniority established in this Group A will apply on all machines listed above as well as any machines added to this group in the future. It is understood that this does not in any way change the provisions of Rule 6, Section 1."

The Carrier concedes that certain work on the Gradall has historically been performed by Helpers. In its letter to the General Chairman of September 23, 1975 the Carrier set out that work and included a reference to occasionally driving the truck which carried the Gradall. We point out, however, that the Gradall work discussed herein includes moving over the road without a second piece of equipment.

This Board holds fast to its position that where seniority classification rules do not specifically set out the work in question the claimant has the burden of proving that the subject work is exclusively reserved to the claimant's seniority class. In the instant matter, however, we come down to a question of what constitutes the operation of the Gradall. There is no question but that the operation of the machine is work of the general sub-department.

The fact that the machine has two operating cabs does not make it less a Gradall when being operated from one rather than the other. In either case the operation of the machine is reserved to employees holding seniority in the general sub-department. We hold that the reasoning of Award 21340 wherein it was determined that the operation of a machine specifically listed in a rule such as Rule 5

above by one not holding seniority in that sub-department establishes a prima facie case is sound and applicable in the instant case.

We will sustain the claim.

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1979.

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