

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23386
Docket Number MW-23350

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned junior Machine Operator D. D. Schaller to perform overtime service on October 28 and November 5, 1978 instead of calling and using Machine Operator D. V. Dickman who was senior, available and willing to perform that service (System Files C # 130/D-2273 and C # 136/D-2274).

(2) Machine Operator D. V. Dickman shall be allowed seventeen and one-half (17-1/2) hours of pay at his time and one-half rate because of the aforesaid violation."

OPINION OF BOARD: On the claim dates, the Carrier utilized the services of an individual less senior to the Claimant to perform work of assisting a truck driver. There appears to be no dispute that the Claimant was available and willing to perform the work, nor do we find any evidence of an emergency situation.

On the property, the Carrier raised the defense of "exclusivity", asserting that the work in question is not reserved to or performed by any class of machine operator.

We are inclined to agree with the Organization in this dispute that the exclusivity theory does not control once the Carrier made the decision to use a machine operator to perform the work in question. Certain Awards - such as 15840 - have stated that although a Carrier may not be obligated to use employees of a certain class; once they make the option to utilize that class, then the Carrier is required to choose from the class of employees according to seniority or by other appropriate rule of the agreement that controls employees of the particular class.

Based upon a review of the entire record, we are inclined to 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;

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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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1981.