

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23465

Docket Number MW-23293

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Pacific Lines)

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

(1) The Carrier violated the Agreement when it used Bulldozer Operator A. Titus to perform laborer's work at Merrill Yard on May 13, 1978 (Carrier's File MofW 125-300).

(2) Because of the aforesaid violation, Laborers B. J. Guthrie and W. D. Freeman be allowed nine and one-half (9-1/2) hours of pay at the laborer's time and one-half rate."

OPINION OF BOARD: Claimants B. J. Guthrie and W. D. Freeman have established and hold seniority rights as Track Laborers. Claimants entered the service of Carrier on December 13, 1972, and April 12, 1954, respectively. On Saturday, May 13, 1978, one of Claimants' rest days, Carrier called, assigned and used a Tractor Bulldozer Operator to perform work which consisted of picking up and distributing track material while assisting the Burro Crane Operator.

The Organization contends that Carrier violated the Agreement when it failed to call Claimants to perform this work which it asserts has customarily, traditionally and historically been performed by Track Laborers. It alleges that Carrier ignored Claimants' seniority rights and further violated Rules 1, 2, 3, 5, 25 and 28 of the Agreement when it called, assigned and used a Tractor Bulldozer Operator to perform Track Laborer's work on overtime hours within the assigned designated work limits of Claimants. The Organization seeks compensation for nine (9) and one (1) half hours at the time and one-half rate.

Rules 3 and 5 of the Agreement address Classes and Seniority. Rule 3 states:

"Rule 3 - CLASSES

Each occupation in the several sub-departments shall constitute a class, and be listed by class in numerical sequence, the lowest number designating the highest class and the highest number designating the lowest class. Such sequence shall be determined by Section (f) of Rule 26. Any existing occupation now covered by the current agreement, which is not listed in Section (f) of Rule 26, shall constitute a class and be assigned to the proper sub-

"department, and shall be subject to inclusion the same as though it were listed.

Not later than 10 days following the establishment of a new class and rate of pay in accordance with the provisions of Article III of the October 7, 1959, Mediation Agreement (see Appendix A), the General Chairman of the organization will be furnished notification thereof. It is agreed that any award which might be rendered in accordance with paragraph (c) (5) of the October 7, 1959, Agreement will be applied retroactively to the date new class and rate was established."

Rule 5 reads in pertinent part:

"Rule 5 - SENIORITY

SENIORITY ESTABLISHED AND CONFINED TO SUB-DEPARTMENT.---
(a) Seniority rights of all employees are confined to the sub-department in which employed. Seniority of employees in all sub-departments shall be shown by classes and each occupation shall constitute a class. Each class shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class.

Seniority in the classes of laborers and helpers shall begin at the time an employee's pay starts in that class. Seniority in all other classes shall begin as of the date the employee is assigned by assignment notice to the class of as of the date that he qualifies for a class under the provisions of Rule 8 of this agreement."

Rule 25 pertains to Work Limits. It states:

"Rule 25 -- WORK LIMITS

DESIGNATED LIMITS. -- (a) Employees assigned to track gangs having fixed headquarters location shall be assigned designated limits within which they are to perform work and such limits shall be shown in advertisement and assignment notices.

The designation of such limits shall not prevent other forces from performing any work within such established limits.

In the event work limits are adjusted due to an increase or decrease in the number of track gangs having fixed headquarters or for other reasons, foremen of gangs involved will be advised in writing of new work limits, with copy to the General Chairman."

"PREFERENCE FOR OVERTIME.-- (b) Employees of gang with designated limits will have preference to casual overtime in connection with work performed by such gang. Other employees will have preference to overtime in connection with the work projects performed by such employees. Overtime in connection with emergencies will be handled by most readily available forces, with preference to the employees of designated territory when time permits. This rule does not preclude gangs working together."

Carrier, on the other hand, denies that it violated the Agreement. It argues that the work performed is not work reserved or exclusively performed by Track Laborers and therefore, is not a violation of seniority rights. It also states that the time spent by the work train in the designated area was four (4) hours, not the nine (9) and one-half hours claimed.

Based on the record, we are persuaded that the work performed is typical Track Laborer work. That is, it is work customarily performed by a Track Laborer. For this reason, a member of the gang should have been called to assist the Burro Crane Operator. When Carrier failed to call one of the gang, it violated the Agreement. The Laborer in the area was entitled to perform the work.

As to the remedy, we find no basis for two members of the gang to be compensated. Instead, we are persuaded that the senior Claimant is entitled to receive compensation for four (4) hours at the applicable overtime rate.

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 in accordance with the Opinion.

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By Order of Third Division

Attest:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

