

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23841  
Docket Number MW-23698

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes  
                              { Missouri Pacific Railroad Company

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

(1) The Agreement was violated when Section Foreman P. G. Lopez was not used to perform overtime service on his assigned section territory (Section 5614) on August 19, 20, 26 and 27, 1978 (Carrier's File S 310-278).

(2) Section Foreman P. G. Lopez be allowed forty (40) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant is regularly assigned as the Section Foreman on Monday through Friday, with Saturdays and Sundays as rest days.

On four rest days, the Carrier utilized a Tamper MAT-48 and a different operator to perform certain track surfacing on the Claimant's assigned territory. Rather than utilizing the Claimant to supervise the performance of the work on his section, the Carrier used a junior Track Foreman for the 10 hours of overtime on each of the four days.

The Employes have cited the "Work on Unassigned Days Rule", and they state that the work should have been done by the "regular employee" who, in this case, is the Claimant.

It is rather obvious that the dispute centers around the Carrier's contention that the Claimant "was not qualified to run Tamper, MAT-48", even though the Organization asserts that said allegation is not material because the work in question consisted of supervising the work rather than operating the machine.

On January 30, 1979, the General Manager advised the Organization that the Claimant "was not called for this service because he was not qualified to run Tamper, MAT-48." On February 23 of that year, the Organization advised the Carrier that it had a statement from the Claimant that he had been the Foreman on machines from 1968 to 1973. Moreover, it pointed out that the individual who performed the work in question worked as "Foreman", not as the machine operator.

On April 19, 1979, the Carrier replied, stating that the senior "qualified" Foreman was called to work with the machine in question, and although Claimant may have been senior to the Foreman who was used, he had never worked as a Foreman over an automatic Tamper such as the MAT-48. Moreover, the Carrier asserted that the Employee's experience has been as a Section Foreman, and his machinery experience has been with "smaller less complicated equipment." Thus, the Carrier concluded, the Claimant was not familiar with the operation of the machine in question, and was not qualified to supervise its operation.

The question of the Employee's qualification is, of course, a fact question. Although the Organization placed the Carrier on notice that it had a document concerning qualifications on machinery; nonetheless, the Carrier distinguished that machinery from the type at issue in this case and asserted - as a factual matter - that the Employee had not supervised machinery as complex as the one in question.

It appears to us that at that point, it was incumbent upon the Employee to further the question of qualification by showing that he had, indeed, supervised the type of machinery in question, or that his prior experience was sufficient concerning the machinery which was used. Thus, we will dismiss the claim for a failure of proof.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant