

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25702
Docket Number MW-25674

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned and used T. W. Shortt instead of M. L. Spikes, Jr. to fill a vacation vacancy of Class "A" Machine Operator at Newport News on December 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22 and 23, 1982 (System File C-TC-1545/MG-3836).

(2) Mr. M. L. Spikes, Jr. shall be allowed the difference between what he would have received at the Class "A" Machine Operator's rate and what he was paid on the claim dates as a trackman and he shall be allowed eight (8) hours of pay at the Class "A" Machine Operator's rate for each claim date on which he was furloughed.

OPINION OF BOARD: Claimant was regularly assigned to a Trackman's position on Force 1105 at Lee Hall, Virginia. His seniority in the machine operator's class was not sufficient at the time for him to hold a machine operator's position and he was working as a Trackman on Carrier's Richmond Division. On December 7, 1982, Machine Operator H. Jarvins who was regularly assigned to the Newport News Terminal Force began his scheduled vacation and on December 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, and 23, 1982, Carrier upgraded a Trackman who also possessed machine operator seniority to operate Class "A" machines as necessary between December 8 and 23, 1983.

It was the Organization's position that said action violated Section 12(b) of Appendix K of the Schedule Agreement since Carrier failed to make efforts to observe the principle of seniority in making the assignment. It argues that Claimant was the senior of the two employees, and thus, should have been assigned to operate the machines. It disputes Carrier's contention that only incidental machine operator's work was performed on the claimed dates; and asserts Carrier has not offered proof to substantiate this line of argument. Section 12(b) of Appendix K is referenced as follows:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute vacancies in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

Carrier asserts that since Claimant exercised his seniority at a position in the Richmond Division, he was not considered available for the work at the Newport News Terminal. In particular, it avers that he failed to notify the Assistant Track Supervisor consistent with Rule 5 that he desired extra work. It maintains that Section 12(b) of Appendix K is inapplicable in this instance since it decided not to fill Mr. Jarvin's assignment. Accordingly, and under these circumstances, Carrier argues that it correctly upgraded the junior employee to operate the Class "A" machines on an as-needed incidental basis; and such upgrading was consistent with long standing past practice.

In our review of this case, we concur with the Organization's position. We have analyzed Rule 5 within the definitional context of Rule 2(h) and find that Claimant was not a cut-off or furloughed employee. Rather he was working in the Trackman's class at the time the junior employee performed the contested work. As such, Rule 5 is inapplicable.

As part of its defense, Carrier asserted the work was incidental and performed on an as-needed basis, but we have no detailed quantitative showing that it was per se minimal in nature. From the record and specifically since the junior Trackman's position was upgraded for purposes of performing Mr. Jarvin's work, we must conclude that Section 12(b) of Appendix K applies and an obligatory "effort" devolved upon Carrier to observe the principle of seniority. Since we have no evidence this effort was made, we must find, of necessity, that the Agreement was violated. As to the compensatory remedy requested, we agree with the Organization that Claimant should be paid the difference between his Trackman's rate and the rate he would have been paid had he worked the vacation machine operator's position on the claimed dates, but we find no justification for the other compensation sought.

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.

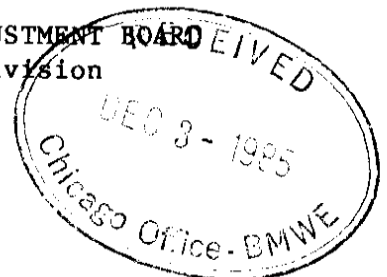
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary



Dated at Chicago, Illinois, this 14th day of November 1985.