

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25924
Docket Number MW-25783

Herbert L. Marx, Jr., 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 Agreement was violated when, on March 7, 1983 a Bridge and Structures Department employe was used to perform Roadway Machine Operator Group work (operate a backhoe) at Newport News, Virginia (System File C-TC-1710/MG-3960).

(2) Because of the violation referred to in Part (1) hereof, the senior cut-back or cut-off machine operator in the Newport News Terminal shall be allowed eight (8) hours of pay at the backhoe operator's straight-time rate."

OPINION OF BOARD: Claimant is an employee holding seniority as a Machine Operator in the Roadway Machine Operator Group. Rule 2, Seniority, and Rule 3, Seniority Rosters, establish without dispute the rights accrued by employees in their respective groups and classes. 1

On March 7, 1983 the Carrier assigned a B&B Mechanic, with no seniority in the Roadway Machine Operator Group, to operate a Backhoe for a period, as stated by the Organization, of eight hours. The Organization argues that the available senior employee holding Roadway Machine Operator Group seniority should have been assigned to this work, under the provisions of Rule 66(f), which reads as follows: 2

"(f) Employees in the roadway machine operator group will be used to operate all of the so-called heavier machines used in the performance of track and bridges and structures work except Mole Ballast Cleaners (see Paragraph (b) above). The smaller machine tools, such as power saws, tampers, drills, etc. will be used by the craft or class doing the particular work the same as the craft or class uses hand tools in connection with such work." 2a

In defense of its action, the Carrier cites Rule 66(a), as well as what it states is its "past practice" to temporarily assign employees to operate the Backhoe "when necessary on a day-to-day basis" without utilizing employees in the Roadway Machine Operator Group. Rule 66(a) reads as follows: 3

3(a) "(a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the Railway. Classification of employees and classification of work, as has been established in the past, is recognized."

4 The Carrier argues that Rule 66(a) retains for the Carrier the right to avoid "uneconomical conditions".

5 The Board finds, however, that Rule 66(f) is clear and precise. The parties offered no evidence that the Backhoe is other than one of the "so-called heavier machines" or that the work involved other than "track and bridge and structures work". This is further evidenced by the fact that the Carrier states the B&B Mechanic was "upgraded" to perform the work. Rule 66(f) follows Rule 66(a) and must be read to limit the general application of Rule 66.

6 To the same effect is the situation considered in Award No. 25703 which states in pertinent part:

6. "In our review of this case, we concur with the Organization's position. We have considered the arguments and rules cited with respect to the parameters of machine operator's work and find that the work in question was that of a machine operator. We have also reviewed the argumentative relationship between Rule 2(b) and Carrier's assertion of past practice and find that under the circumstances herein and the precedential effect of Third Division Award No. 24521, Rule 2(b) takes precedence. We have further reviewed the respective arguments with respect to the appropriate application of Rules 66(f) and 66(a) and find that Rule 66(f) governs in this instance. Rule 66(f) is a specific rule as contrasted with Rule 66(a) and provides that Roadway Machine Operators will be used to operate all of the "so called" heavier machines in the track and bridge structures work. Based on the parties on site correspondence, we find no persuasive evidence that a backhoe is not equipment covered by Rule 66()."

7 As to remedy, the Carrier points out that the senior employee with claim to the work was under pay for the same eight-hour period in another position and thus the claim, if sustained, is excessive. The seniority

standing of this employee was not disputed. The Board will find that the employee who should have been called for the work in question is entitled only to the difference in pay between what he received and what he would have been entitled to as a Machine Operator in the Roadway Machine Operator Group. 7

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;

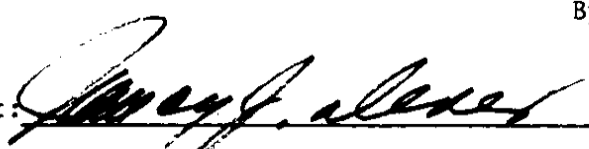
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.