

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25926
Docket Number MW-25878

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 Carrier violated the Agreement when it assigned Trackman C. McKinney to fill a vacancy as machine operator on the crossing force at Danville, West Virginia April 5 through April 25, 1983 instead of assigning cut-back Machine Operator J. L. Lambert who was available and qualified to fill that vacancy (System File C-TC-1771/MG-4044).

(2) Because of the aforesaid violation, Mr. J. L. Lambert shall be allowed the difference between what he should have been paid at the Class 'A' Equipment Operator's rate and what he was paid at the trackman's rate for one hundred forty-four (144) hours."

OPINION OF BOARD: This Claim involves the use of an employee without Machine Operator seniority to operate a Tamping Machine from April 5 through April 25, 1983 at Danville, West Virginia, in place of the Claimant, a displaced Machine Operator within the Roadway Machine Operator Group. The Organization argues that this is in violation of the Claimant's seniority rights and Rule 66(f), which reads as follows:

"(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."

This dispute is similar to that considered by the Board in Award No. 25924 and Award No. 25925 as to the rights of Machine Operators to operate the "so-called heavier machines". In this instance, the machine is a Tamper, rather than a Backhoe, but no contention is made that the Tamper is other than a "heavier" machine.

The Carrier argues in this instance that the Claimant failed to "request" the assignment or "make known" his seniority rights and that the Claimant was working in a location some 13 miles away. The Carrier further contends that its practice is "that the senior, most readily available employee at the work location is upgraded to operate equipment for temporary and intermittent machine operator work".

As discussed in the two previously cited Awards, the Board finds convincing basis for the Organization's position as to the clear and precise effect of Rule 66(f). (Seniority rights are not limited to instances where an employee must take an initiative, especially where he may have no advance knowledge of the assignment of other employees.)

The Carrier also questions the propriety of the Claim for 144 hours pay for the 14 days on which it acknowledges another employee was utilized. The Organization claimed from the outset that this was the number of regular and premium hours worked by the other employee, and the Carrier offers no documentation to the contrary, other than to point out that 14 regularly scheduled days represents less than 144 hours. Resolution of the remedy should provide little difficulty. For reasons based on the two previously cited Awards, the Board will find that the Claimant is entitled to the appropriate rate of pay representing the total number of hours worked on the Tamper, less his actual earnings in the same period.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

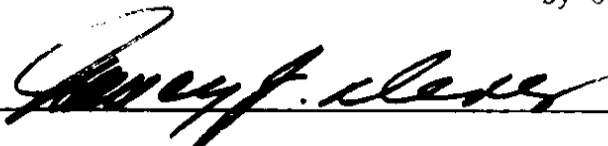
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

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

