

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26484

Docket Number MW-25965

Irwin M. Lieberman, 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 Machine Operator B. W. Robbins instead of Machine Operator M. J. Williams to perform overtime service on June 11, 1983 (System File C-TC-1839/MG-4100).

2. As a consequence of the aforesaid violation, Machine Operator M. J. Williams shall be allowed ten (10) hours of pay at his time and one-half rate."

OPINION OF BOARD: Claimant was regularly assigned to the position of Tie Crane Operator with Tie Force 1252 with a work week of Monday through Friday, with Saturdays and Sundays designated as rest days. On Saturday June 11, 1983, Carrier assigned Motor Car Operator Robbins to operate the Tie Crane (for ten hours of overtime) instead of calling Claimant, thus triggering this dispute. Robbins had more seniority than Claimant on the Machine Operator Seniority Roster but not on Tie Force 1252.

Organization argues that Claimant was entitled to the work in question under the provisions of Rule 2(b), 28(c) and 29(b), which provide:

"Rule 2(b)

Service Rights - Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway Company as hereinafter provided.

Rule 28(c)

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

"Rule 29(b)

When necessary to work employees continuous with and in advance of the regular tour, not continuous with the regular tour, and on rest days and holidays when the employee is not regularly assigned to work on holidays, senior employees on the particular gang or force, if qualified, will be given preference if they are available."

The Carrier's argument focuses primarily on the type of work involved. Carrier maintains that the work was not continuous with Claimant's regular assignment and the use of the same Tie Crane as that used by Claimant does not per se entitle him to the work. Moreover, Carrier insists that the work was different in that it was independent work which required a motor car permit since track-use authorization was needed. Carrier pointed out that Claimant was not qualified to perform the work since he did not possess a motor car permit. Carrier concluded that Robbins was the senior available employee qualified to perform the work who had a valid motor car permit.

The Board is persuaded that Carrier's position in this matter is correct. Organization, in an attempt to show that the work was identical to that performed during the regular work week, contended that it was not independent since a Foreman was present for "about" an hour. There was no showing that the Foreman was present for more than an hour of the ten hour period. It must be concluded that Claimant was not qualified to perform the work since he did not possess the requisite motor car permit.

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

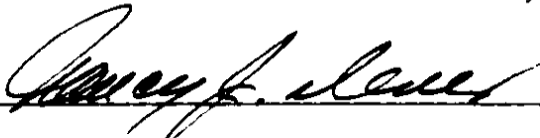
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.