

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

PARTIES TO DISPUTE: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to recall furloughed Machine Operator U. Marquez to fill a temporary vacancy as machine operator (backhoe) at the Gary Mill on October 16, 1984 (System File TG-31-84/VM35-84).

(2) Because of the aforesaid violation, Machine Operator U. Marquez shall be allowed eight (8) hours of pay at the machine operator's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a claim by a furloughed employee with seniority as Roadway Machine Operator, because the Carrier assigned a Trackman to such position on October 16, 1984, instead of recalling the Claimant. The Organization argues that the position was a "vacancy" and as such is covered by the preference given to "senior unassigned employees in the seniority rank," as provided by Rule 31(b).

Throughout the claim handling procedure, the Carrier pointed out that the work assigned was for two hours only and that the Trackman so assigned was paid as Roadway Machine Operator under the terms of Rule 48, dealing with "composite service," which reads as follows:

"Rule 48 An employe working on more than one (1) class of work, coming within the scope of this agreement, four (4) hours or more on any day, will be allowed the higher rate of pay for the entire day. When less than four (4) hours are worked, he will be paid at the higher rate for the actual time worked. When temporarily assigned by the proper officer to a lower rated position his rate of pay will not be reduced. Where employes are regularly assigned less than four (4) hours for a period of thirty (30) days or more to work carrying a higher rate, necessary adjustment in daily or monthly allowance may be negotiated. An employee coming within the scope of this agreement, required to and performing work during the whole or a part of this daily assignment, not covered by the scope of this agreement, carrying a higher rate of pay, will be allowed actual time worked, at the higher rate of compensation, with a minimum allowance of one (1) hour."

The Board agrees with the Organization's position that Rule 48 does not, by itself, sanction the assignment of an employee to more than one position in a working day. Rather, the Rule simply provides for appropriate pay where such transfer is not otherwise prohibited. As stated in Third Division Award No. 6698:

"The Carrier places undue importance upon the composite service rule. Such rule is of value in measuring compensation due on permissive work of differing classes of service during a day's tour of duty. However, it cannot serve as a pass to cross craft lines if such lines are discernible."


Nevertheless, the Board finds no merit in the claim, under the particular circumstances here involved. First, the transferred employee held seniority in the Roadway Machine Operator classification and was senior to the Claimant in such seniority. Second, the work involved was within the same craft and department, rather than assigned to someone outside such craft and department. Third, two hours' work with these two underlying conditions does not meet the definition of vacancy requiring the recall on an employee from furlough.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.