

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

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

(1) The Carrier violated the Agreement when it assigned and used Track Inspector R. Kernica to perform the work of a crane operator on January 28 and 31, 1984 and February 10, 14, 15 and 17, 1984 (Carrier's File 390-MofW).

(2) Because of the aforesaid violation, cut-back Crane Operator W. Sheppard shall be allowed forty (40) hours of pay at the crane operator's straight time rate and nine and one-half (9 1/2) hours at the crane operator's time and one-half rate of pay."

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.

By letter of March 24, 1984, the Organization filed a Claim that Carrier violated the Agreement when it assigned a Track Inspector to the lower-rated position of Crane Operator in preference to the Claimant. The Organization argues that the temporary Crane Operator position should have been occupied by the Claimant who held the lower-rated position of Laborer.

The essential facts are not in dispute here. The regular incumbent of the Crane Operator's position went on vacation and the Carrier did not utilize a regular relief employee. The higher-rated position of Track Inspector was held by an employee who had a seniority date of June 1, 1967, as Crane Operator. The Claimant had established seniority as a Crane Operator on March 3, 1980, but when the Crane Operator's position had been abolished, he exercised his displacement rights to the position of Track Laborer. At the time of this dispute, Claimant desired to move up to the higher-rated temporary position, while the Carrier assigned it to the Track Inspector.

The substance of this issue is the Organization's argument that the Carrier violated the Agreement when it assigned the Crane Operator's position to the higher-rated employee. The Organization points to numerous Rules and Awards in support of its Claim. The Carrier denies any Agreement violation noting that it complied with both the National Vacation Agreement and the negotiated Agreement with the employees.


This Board has carefully reviewed the record of this case and the pertinent Awards and Rules cited by the parties. We are compelled by this record to conclude that the Organization has not by any probative evidence of practice or provision demonstrated that preference for the temporary Crane Operator's position should have gone to the Claimant. We have carefully read the Awards and find that they are not directly applicable to the instant circumstances. We have reviewed Rules 1, 2, 3, 5, 6, 13 and 14 finding no Rule in the Agreement that would have required the Carrier to work the Claimant rather than the senior qualified employee that was assigned. There is nothing in the expressed Rules of the Agreement that restricts Carrier and this Board will not create an interpretation that goes beyond the negotiated language of the Agreement. We are constrained to deny the Claim.

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 22nd day of September 1988.