

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former
(St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Trackman-Driver T. E. Walker to fill a temporary vacancy as machine operator (spike puller) on Tie Gang T-2-11 beginning March 11, 1985 instead of assigning and using Machine Operator J. Dunlap who was senior, available and qualified to fill that vacancy (System File B-2282/EMWC 85-6-10C).

(2) Because of the aforesaid violation, Machine Operator J. Dunlap shall be compensated for all time lost beginning March 11, 1985."

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 employes involved in this dispute are respectively carrier and employes 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.

On March 18, 1985, Carrier commenced using Trackman-Driver T. E. Walker, an employee without machine operator seniority, to operate a spike puller on Tie Gang T-2-11. At the time, Spike Puller Operator J. Dunlap, the herein Claimant, who had been furloughed on February 8, 1985, was available to operate the equipment.

When the facts before us are applied to the Rules of the Agreement it is our opinion that Claimant's seniority rights were violated when Carrier used an individual without machine operator seniority to operate the spike puller.

Carrier has argued that the Trackman-Driver was only temporarily working the job and that this is a common practice allowed by the Rules. However, Carrier has not submitted any evidence to support this conclusion. It is clear to us that the Agreement here involved reserves to employees holding seniority as machine operators work on positions and vacancies connected with the operation of a spike puller in preference to upgrading an individual without machine operator seniority. If it is alleged that existing practice prevails over clear contract provision then it is necessary to support such allegations with substantial evidence. This has not been done.

Accordingly, we will sustain the Claim. Machine Operator Dunlap shall be paid an amount equivalent to that paid Trackman-Driver Walker for each date subsequent to March 18, 1985, and prior to May 1, 1985, (when he resumed duties as a machine operator), that he was furloughed and Walker operated the spike puller.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.