

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when, beginning on April 20, 1983 and on a continuing basis thereafter, it failed and refused to allow MW Repairman J. L. Morris an opportunity to qualify on the Grove Crane in the Canton Shop, thereby depriving him of the opportunity to operate said crane in accordance with his seniority (System Docket CR-1334).

(2) Mr. J. L. Morris shall be afforded a fair and objective opportunity to qualify as an operator of the Grove Crane in the Canton Shop and he shall be assigned to operate said crane in accordance with his qualifications and seniority."

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.

Herein the Board finds a request by Claimant under Rule 3, Section 2 of the Agreement to give a practical demonstration of his qualifications to perform the duties of Pettibone/Grove Crane Operator and to be assigned to the position. Carrier denied Claimant's request and on both procedural grounds and merits argues that there has been no Agreement violation.

The Board does not find clear and unambiguous evidence of a procedural violation. The modification of the grievance is not sufficiently at variance to dismiss on procedural grounds.

On merits, the Board is concerned with the importance of seniority issues. It is not disputed that junior employees have earned overtime by working the Grove Crane, wherein Claimant has not been trained or assigned

thereto. Nevertheless, this Board finds no probative evidence whatsoever of any Agreement violation by the Carrier. The Board finds Rule 3, Section 2, applies to advertised positions. The Organization does not refute Carrier's statement that "the Grove Crane is not an advertised position in the exercise of seniority under Rule 3." It stands as fact. This Board may not require the position bulletined or assigned if this has not been negotiated by the parties into the language of the Agreement (Third Division Awards 25920, 25128, 21858). Therefore, the Rule is inapplicable in these circumstances and the Agreement has not been 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 23rd day of November 1988.