

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27698
Docket No. MW-27205
89-3-86-3-279

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 Machine Operator G. Roark to fill a temporary vacancy as machine operator (tie shear) on February 28, March 1, 4, 7, 12, 13, 18, 21 and 22, 1985 in the vicinity of West Plains, Willow Springs and Sergeant, Missouri instead of assigning Machine Operator W. R. Jones (System File B-1845/EMWC 85-6-10A).

(2) Because of the aforesaid violation, Machine Operator W. R. Jones shall be compensated for all time worked by Machine Operator G. Roark on the claim dates in filling the position referred to in Part (1) hereof."

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 nine days in February and March, 1985, an Omni Ditcher, operated by Machine Operator G. W. Roark, with a seniority date of October 28, 1974, was mechanically inoperable. While the gang, to which the machine was assigned, was awaiting a replacement Mr. Roark was used to operate a Tie Shear machine. After the replacement ditcher was received operation of the Tie Shear machine was discontinued. A Claim was filed by the Organization contending that Rules 2, 8, 22, 38(a)(6) and 79 of the Agreement were violated when Carrier allowed a junior employe to operate the Tie Shear. The Claim was initially denied on the basis that the employee assigned was senior to Claimant.

As the Claim was perfected on the property and before this Board the Organization narrowed the issue to a contention that Rule 38(a)(6) reading:

"Except as otherwise provided, employees will not be permitted to work unbulletined temporary positions or vacancies in class where they hold sufficient seniority to entitle them to a regular position."

was violated. The employee assigned it is argued, held a regular position during the time period of the Claim, thus the furloughed Claimant should have been recalled to operate the Tie Shear machine.

Carrier responds that Rule 38(a)(6), as well as other Rules cited by the Organization, does not restrict a machine operator from working on another machine during the time his one machine is inoperable. It also contends that it has a long standing practice of using machine operators in other capacities when their machines were down for mechanical reasons.

We are not persuaded that the employee assigned to the brief operation of a Tie Shear machine, while he was awaiting delivery of a replacement Omni Ditcher, can be considered the same as work on an unbulletined temporary position or vacancy within the context of Rule 38(a)(6). To prevail on this theory the Organization must first establish that the operation of the Tie Shear machine, at the time, was akin to filling an unbulletined temporary position or vacancy. This record fails in this respect.

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 2nd day of February 1989.