

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it assigned or permitted Foreman Lara to perform overtime service in connection with repairing Jimbo Tie Crane No. AT-242 on January 13, 1986 instead of using Machine Operator J. S. Landeros who was available and willing to perform that service (System File 100-33-867/11-1580-220-487).

(2) Machine Operator J. S. Landeros shall be allowed five and one-half (5 1/2) hours of pay at his time and one-half 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 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.

Claimant holds seniority as a Group 7, Class 3 Machine Operator and was regularly assigned to Jimbo Crane No. 242 when this claim was made by letter of February 14, 1986. It read in part:

"On January 13, 1986, Claimant's Machine, a Jimbo Tie Crane No. 242, was in need of repair and the mechanic had the parts. Claimant's foreman sent Claimant home and stayed 5 1/2 hours himself to assist the mechanic repair Claimant's machine.

Rule(s) 33 (1) of our Agreement dated January 1, 1984 provide:

'33 - (1) - Preference To Overtime Work.  
Except when employees are utilized as provided in Rule 33 - (f), employees assigned to sections, work districts, specific areas and/or locations shall be given preference in relative seniority order among employees of the gang, work district or location to overtime work to be performed within such section, district, area or location.

Employees assigned to road gangs, such as Track Extra Gangs and B&B Gangs, Machine Operators, etc., shall have preference to overtime work in relative seniority order in connection with work projects to which they are assigned....'"

Carrier admits the event took place, with the repairs being made by a Work Equipment Maintainer who is represented by the Machinists Organization. Carrier responded:

"Claimant Landeros was not assigned to any project that required him to work beyond his regular quitting time on January 13, 1986; therefore, and contrary to your contention, Rule 33(1) was not violated.

If you are contenting that the claimant should have been used to assist the Work Equipment Maintainer to effect the necessary repairs on his machine, then I cannot agree, as such work is not reserved exclusively to operators of machines or any other group and class of employees covered by the Agreement."

On May 14, 1986, the Organization wrote:

"As you have admitted the facts happened as stated in the claim, then you are only arguing that a foreman has the right to send a machine operator home and then stay and work on the operator's machine himself. The operator is charged with maintenance on his machine, why then would he not be allowed to stay and learn more about the machine and the maintenance thereof. The work certainly should not fall within the supervisory duty of the gang foreman who wanted the overtime for himself."

In discussion on the property the Organization again raised the following Rules:

"ROADWAY MACHINE OPERATORS

1040. REPORTING: Roadway machine operators will report to and receive instructions from the appropriate Maintenance of Way officer, track supervisor and foreman as required by their assignment.

1041. RESPONSIBILITY: They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned. An immediate report will be made to the proper authority and followed up with a wire report when a machine is out of service or not performing properly. If a safety device is not operating properly the operator will take every precaution for safety. If the machine cannot be operated safely it will be removed from service and a wire report will be sent to the supervisor of work equipment and division engineer.

They will be governed by instructions of work equipment maintainers and roadway mechanics regarding the maintenance and operation of machines.

Upon taking over a machine and again upon completing assignment, they will render to the appropriate Maintenance of Way officer and work equipment supervisor under whom they may be working, a report of the condition of the machine. This report will list small tools, operator instruction book, parts book and repair parts on hand. Copies of all reports shall be made to the division engineer and supervisor of work equipment.

Roadway machine operators must have the proper hand tools necessary for maintenance and servicing of a machine. On machines so equipped machine operator will record each day in the machine log book the maintenance and/or repairs they performed on the machine that they are assigned to operate."

With reference to these Rules, Carrier wrote the Organization on March 6, 1987, contending:

"Rule 1041 of the Rules Maintenance of Way and Structures which you have made reference to does state that Roadway Machine Operators must have the proper hand tools necessary for maintenance and servicing of their machines. They also must record each day, in the machine log book, the maintenance and/or repairs performed. The type of repairs performed by the operators of machines are minor, such as replacing broken hoses, bolts, changing flat tires on rubber tire equipment, etc.

The type of work performed by the Work Equipment Maintainer on the Jimbo Crane in the instant case was more of a major and technical nature, and it was work accruing to his craft (IAM). There was never any dispute between the parties regarding the nature of the repair work and whether the Work Equipment Maintainer had the right to perform the work. Your claim was filed because the foreman, rather than the claimant, was used to 'assist' the Work Equipment Maintainer in connection with the repair work on an overtime basis. You asserted that the claimant should have been allowed to 'stay and learn more about the machine and the maintenance thereof.'

Contrary to your self-serving assertion, the Rules of Maintenance of Way Structures do not 'reserve' any work to BMWE employees. It is merely a book of rules issued by the Company governing the railroad operation which machine operators and other groups and classes of employees covered by the BMWE Agreement are required to know and obey."

In addition to the above Rules, the following Agreement Rules are relied upon by the Organization:

"RULE 8 - PROMOTIONS, ASSIGNMENTS &  
DISPLACEMENTS

8 - (a) - Promotions, Assignments and Displacements. Promotions, assignments and displacements shall be based on seniority, fitness and ability. If fitness and ability of applicants are sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to clearly establish the rights of the senior qualified employee having adequate fitness and ability for the position or vacancy.

To be considered for promotion to a higher class in his seniority group, an employee must signify such desire in writing to the Division Engineer with copy to the General Chairman.

RULE 9 - BULLETINED VACANCIES AND NEW POSITIONS

9 - (a) - New Positions, Permanent Vacancies and Known Temporary Vacancies of More Than Thirty Days. All new positions and permanent vacancies - also known temporary vacancies of more than thirty (30) calendar days' duration (not including vacations) - that are to be filled, in the classes listed in Rule 2-(a), will be promptly bulletined to the employees holding seniority in the class in which they occur.

RULE 11 - GROUP 7 MACHINE OPERATORS

11 - (a) - Group 7 Machines. Group 7 machines are those machines which are not listed in Groups 5 and 12 of Rule 2 - (a).

11 - (b) - Filling Group 7 Machine Operator Positions. New positions and permanent vacancies - also known temporary vacancies of more than thirty (30) calendar days' duration (not including vacations) - that are to be filled in Group 7 will be filled first by bulletining to the employees holding seniority in the class, or working in a lower class of Group 7 pursuant to Rule 9(a); second, by advancing the senior qualified off-in-force-reduction employee subject to recall in the class; third, by either advancing the junior employee of the class who is not working in the class but is working in a lower class of Group 7 or on a lower rated position of another seniority group."

The Organization argues the above Rules mean positions are to be assigned by seniority and work flowing from a position is reserved to employees assigned to that position. Thus work arising from the operations of the Jimbo Crane is reserved to Claimant as its incumbent operator. In support, the Organization cites Third Division Award 4681 to the effect that railroad industry agreements "gravitate primarily not around the employee and not around the work but around the position" and Third Division Award 1314 which held:

"From what has been said it is apparent that the two outstanding purposes of agreements are to insure to a craft those positions which fall within the craft, and to insure to the members of that craft the work concomitant to those positions in order of their length of service, for work is to the position what seniority is to the employee. Those two principles are the top stone and keystone of the arch. Work is attached to and is an attribute of a position; seniority attaches to and is an attribute of the person.

In consequence of what has been said it follows that 'positions' which are subject to the agreement are protected to the craft by the agreement, and since 'work' is of the essence of a position such work which is the manifestation of the position and the identity of it is likewise protected to the craft."

Finally, the Organization argues the foreman performed work customarily and ordinarily performed by the machine operator who is assigned to the machine in question. It apparently bases this contention on Carrier's Rules 1040 and 1041 and it takes the position Carrier's March 6, 1987 letter quoted above firmly establishes a practice whereby the work at issue in each instance has been performed by the employee assigned to the machine. We do not read that letter in the same manner. In fact we read it in just the opposite way. There is no dispute that the Work Equipment Maintainer, represented by the Machinists Organization, was properly assigned to the work and we believe that is dispositive of the case. We find no Rule requirement that the Machine Operator be assigned to help a Work Equipment Maintainer who has been properly assigned to repair a machine. It may be that by being allowed to do so, an Operator would learn more about the machine and its maintenance as the Organization urges. That however, is a question for Carrier, not this Board, to determine.

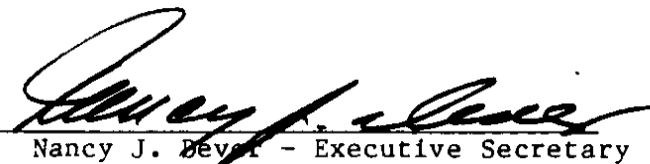
As we find no Agreement Rule requiring assignment of a machine operator to assist a Work Equipment Maintainer who is repairing the operator's machine, and as we see no evidence of an exclusive practice requiring such assignment, we must deny this claim.

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 10th day of August 1989.