

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (Seaboard System Railroad)

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

(1) The Agreement was violated when, beginning November 19, 1985, a pile driver operator from the Louisville and Nashville Railroad Company was used to operate a pile driver on the Atlanta Division at Rockmart, Georgia [System File MachOp-86-8/12-1(86-178) I].

(2) Because of the aforesaid violation, each employe holding a position in the Maintenance of Way General Subdepartment, Group A, Machine Operator, on the Rocky Mount, Raleigh, Florence, Savannah, Atlanta, Waycross, Jacksonville and Tampa Divisions during the claim period shall be allowed pay, at their respective rates, for an equal proportionate share of the man-hours expended by Louisville and Nashville Railroad Company pile driver operator in performing the work 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.

Beginning on November 18, 1985, Carrier assigned an employee holding seniority on the former L & N Railroad to operate a crane (termed a pile driver by the Organization) to assist a Seaboard Coast Line Railroad Bridge Gang to remove a bridge on the Atlanta Division of the former Seaboard Coast Line. The Claim herein was filed on January 27, 1986, some seventy days following the initial assignment. The work continued until January 27, 1986.

The Organization insists that the employee Carrier used had no seniority on this Carrier whatever and hence no right to any work on the property in question. On the other hand, it is argued that there were available Machine Operators with the requisite skills and seniority to do the work. The Claimants all had seniority as Group A Machine Operators on the former SCL, and pile drivers as well as cranes are considered Group A-Roadway Machines, under Rule 5 of the Agreement. The Organization also maintains that the Claimants are readily identifiable from Carrier's payroll records. It is also argued by the Organization that there was a loss of work opportunity involved in this matter.

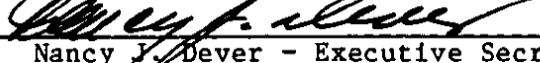
Carrier argues first that the Claim was not timely filed since it was presented some seventy days following the initial assignment of an L&N employee on the pile driver. Furthermore it is maintained that the Organization has failed to identify the employee allegedly damaged. Carrier avers further that the particular piece of equipment was a converted steam-powered machine requiring a qualified operator. Even if there were a qualified operator available, all he would be entitled to, as Carrier views it, would be the difference in earnings. In addition, there is no showing that any of the unidentified Claimants was qualified to operate the particular piece of equipment.

From the entire record of this matter, it seems apparent that this is indeed a continuing Claim and was properly filed under Rule 40. However, under that Rule, it certainly has no retroactivity beyond sixty days. It should be noted that Carrier properly raised the timeliness issue during the handling on the property. The Board finds that Carrier improperly used an employee with no seniority on the property for the work in question (this regardless of the good motivation of keeping the particular gang working). There has been no showing that there were no employees from the SCL seniority list who could have been made available for the work. Further, there should be no problem in identifying the Claimants herein (see Third Division Award 22274). With respect to Carrier's position on the nature of a possible remedy, it seems clear that in this dispute the Claimants were deprived of work opportunity and under well-established precedents are entitled to full compensation, rather than the difference in compensation for the two jobs (see, for example, Third Division Awards 14004, 17051 among many others). In sum, therefore, the Claim must be sustained with the limitations specified in Rule 40.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.