

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28614
Docket No. MW-28727
90-3-89-3-109

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior B&B Mechanics (initially Dean Peterson and R. F. Lilliberg) instead of senior B&B Mechanics (initially Steven Heskins and Jason Lee) to perform B&B work at the Duluth Ore Docks on a regular daily basis beginning September 29, 1987 (Claim No. 39-87).

(2) As a consequence of the aforesaid violation, the appropriate senior furloughed B&B Mechanics (initially Messrs. Steven Heskins and Jason Lee) shall be compensated for all wage and benefit loss suffered as a result of junior B&B Mechanics (initially Messrs. Dean Peterson and R. F. Lilliberg) performing B&B work at the Duluth Ore Docks beginning September 29, 1987 and continuing until the violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Prior to 1978 the Duluth Ore Dock was the only facility at Duluth utilized by the Carrier to unload and store iron ore materials. B&B Mechanics performed necessary operation and maintenance functions. In 1978 the Carrier opened its new Lakehead Storage facility, connected by conveyor belt to the Duluth Ore Dock facility.

To provide the necessary skills to perform the more advanced operation and maintenance work at Lakehead, the Carrier and the Organization negotiated Supplement 38, calling for establishment of the position of Mechanic-Storage Facilities after employees underwent an extensive training period.

Not all employees elected to bid on the trainee positions, originally intended for work at Lakehead, with some senior B&B Mechanics retaining their positions at the Duluth Ore Dock. These became informally known as "Top of the Dock" B&B Mechanics.

According to the Carrier, improvements were made throughout the system, requiring use of the newly trained higher skilled Mechanics at both Lakehead and the Duluth Ore Dock. Eventually, the "Top of the Dock" Mechanic positions were eliminated, with the higher paid Mechanics-Storage Facilities being assigned all of the work. The Carrier concedes that this includes, to some degree, the lower skilled work formerly performed by B&B Mechanics who had been assigned at the Duluth Ore Dock.

The Claimants herein were B&B Mechanics at the Duluth Ore Dock, senior to the employees used at the Mechanics-Storage Facilities. They had, however, not taken advantage of the opportunity to accept training toward the higher rated position. The Claimants were on furlough throughout 1987.

It is the Organization's position that the Claimants, or other employees later similarly situated, should have been assigned and/or permitted to return from furlough to perform such work at the Duluth Ore Dock for which they were qualified.

The Carrier points to the continuing growth of the more complex operational and maintenance work and the diminution of the work as formerly performed at Duluth. The Carrier argues that it is within its prerogative to have the higher rated Mechanics-Storage Facilities available to perform both the higher skilled as well as the remaining lower skilled work. The Carrier points to Rule 24, Composite Service, which reads as follows:

"An employee working on more than one class of work four hours or more on any shift will be allowed the higher rate of pay for the entire shift. When temporarily assigned by the Foreman or Supervisor to a lower rated position, his rate of pay will not be reduced."

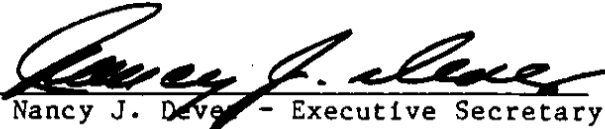
There is no showing that the Carrier acted in an arbitrary fashion to deprive B&B Mechanics of work opportunity or to deliberately flout seniority requirements. The nature of the work was gradually changing; the employees were offered the opportunity to qualify for the more complex work; and no Rule was convincingly cited which would prohibit the Carrier from its actions.

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 16th day of November 1990.