

The Third consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

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

(1) The Agreement was violated when, effective January 15, 1988, the Carrier abolished the positions of Machine Operators F. W. Moody, R. A. Isgrig and R. D. Collins without five (5) working days' advance notice and subsequently assigned junior employes to fill their positions on Gang 9415 in the Panel Plant in North Little Rock, Arkansas effective January 16, 1988 (System Files 880195 and 880194 MPR).

(2) As a consequence of the aforesaid violations, Claimants F. W. Moody, R. A. Isgrig and R. D. Collins shall each be allowed ninety-six (96) hours of straight time pay and eight (8) hours of time and one-half pay at the machine operator's 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.

The three Claimants named in this dispute had been working as Roadway Machine Operators until their jobs were abolished in December 1987. Each was allowed to displace a junior employee working as a Machine Operator on Gang 9415 in the Panel Plant, North Little Rock, Arkansas. On January 15, 1988 (according to Carrier's version of the incident) the Plant Supervisor, upon his return from vacation, determined that Claimants' had been allowed to displace illegally (Carrier's emphasis) and therefore to remedy the illegal displacements their jobs were abolished. The day after the abolishments occurred, overtime was necessary and the three qualified operators (former occupants) were called in and utilized on overtime. Subsequently, the abolished jobs were rebulletined.

The Organization filed two separate Claims contending that Carrier improperly abolished the positions without giving Claimant's the required five days notice. Also, Carrier assigned junior employees to perform the duties of Claimants' positions instead of allowing the Claimants to work in accordance with their seniority. The Organization also argues that Claimants' were fully qualified to work the jobs in the Panel Plant.

Carrier contends that Claimants did not possess qualifications to operate the equipment in the Panel Plant. Thus their displacements were illegal and to correct the problem their jobs were abolished and rebulletined. Carrier states, in support of the procedure followed to get Claimants off the jobs in the Panel Plant, that it felt:

"...that disqualification from the class was too harsh and looked for a remedy which would not necessitate disqualification."

Notwithstanding Carrier's expression of noble motive to avoid disqualification of three machine operators (who apparently never before had their qualifications as machine operators questioned) we are unable, from a fair reading of the Agreement, to conclude that Claimants jobs were properly abolished. Moreover, without a clear showing that Claimants were not qualified it was improper to work junior employees on their machines the very next day after the abolishments occurred. It is apparent that at least someone in management considered Claimants qualified to work the jobs or else they would not have been allowed to displace originally. Moreover, there is nothing substantive in this record demonstrating that any one of the three did not perform in a satisfactory manner during the month he worked the job.

If it is correct that the three Machine Operators were not qualified (as Carrier suggests but is disputed by the Organization) the way to remedy the situation was through a determination of qualifications (where the issue could be addressed by examination of evidence on both qualifications and ability of the individuals as well as the duties and requirements of the positions), not an illegal abolishment of three jobs on an unsupported argument that the three incumbents had secured the jobs through illegal displacements.

The Agreement was violated, the Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.