

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29623
Docket No. MW-29262
93-3-90-3-148

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
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employe R. Hardwick instead of senior employe M. Closson to fill a Class 2 Machine Operator position operating the backhoe on Ballast and Timber Gang SE-252 beginning July 25, 1988 and continuing (System Docket MW-236).

(2) As a consequence of the aforesaid violation, Mr. M. Closson shall be compensated for all straight time and overtime wage loss suffered beginning July 25, 1988 and continuing until the violation was 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 employe or employes involved in this dispute are respectively carrier and employe 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.

Following a force reduction, the Claimant and a junior employee were working as Trackmen. Beginning on July 25, 1988, the junior employee was utilized as a Class 2 Machine Operator. The Organization contends that this was a vacancy which should have been bulletined and which the Claimant could have filled on the basis of his seniority and qualification.

The record supports the Carrier's contention that the junior employee was utilized on the Class 2 Machine Operator position only on an intermittent basis, and there is Rule support to sanction this without the necessity of bulletining a Machine Operator position. Thus, initially, the Board finds no Rule violation.

On August 4, 1988, however, the Claimant's position as Trackman was abolished. There is no contradiction to the contention that he sought advice as to his displacement rights and that he was not informed of the junior employee's continuation in service. Since the junior employee, continuing to be used as a Machine Operator on an intermittent basis, was otherwise classified as a Trackman, the conclusion must be reached that the Claimant was denied appropriate displacement rights commencing August 5, 1988.

The Claim will be sustained only from August 5, 1988, until the Claimant's return to service or to when the junior employee was no longer in the same status, which came sooner.

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 8th day of April 1993.