

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30085
Docket No. MW-29299
94-3-90-3-182

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 Carrier violated the Agreement when it permitted IUOE Heavy Equipment operator L.G. Weatherford to displace BMW Machine Operator H. Carroll on the Speed Swing 125 located in the Monroe yard on the Louisiana Division beginning November 15, 1988 (Carrier's File 890124 MPR).
2. As a consequence of the aforesaid violation, Mr. H. Carroll shall be allowed:

'... mileage of twenty miles one way, total of forty (40) miles per day since he is having to go to Joycetown, Louisiana rather than to Monroe, La., at 24 cents per mile, plus the travel time each day at straight time rate of pay, beginning November 15, 1988, and continuing so long as Mr. Weatherford or any other Heavy Equipment Operator operates the SS-125 and until Mr. Carroll is returned as operator of the SS-125.'

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.

As Third Party in Interest, the International Union of Operating Engineers was advised of the pendency of this dispute, and filed a Submission with this Division.

As in Third Division Award 29111, the Organization protests the use of an employe represented by the International Union of Operating Engineers, rather than a roadway Machine Operator to operate a Speed Swing on Carrier's lines. In this instance, the work in question was being performed out of Monroe, Louisiana. The Organization argued in both cases that when Carrier assigned Speed Swings for use in its terminals, it bulletined and assigned those positions to Operating Engineers. It maintained that when it assigned these machines for track maintenance, positions were assigned to Machine Operators.

Award 29111 found that no complaint about the operation of a Speed Swing by an Operating Engineer working outside a terminal had been registered prior to 1988. It considered this fact in conjunction with Paragraph (e) of the Scope Rule, which states:

"Does not include operators and helpers on heavy equipment on Eastern and Western except when assigned to system bridge gangs."

Award 29111's conclusion that the claim was without merit is based on sound reasoning. We reach the same conclusion here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of March 1994.