

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36219
Docket No. MW-35689
02-3-99-3-630

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
(
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to bulletin a new Group 5 Machine Operator position (rail lifter/plater machine) on Gang TP-05 beginning July 8, 1997 and continuing in accordance with Rule 20 of the Agreement (System File T-D-1428-H/MWB 97-12-09AE BNR)
- (2) As a consequence of the violation referred to in Part (1) above, commencing July 8, 1997, Claimant C. D. Heidinger shall be compensated ‘... for any and all losses including pay rate differentials, loss of overtime opportunity, and per diem expenses under Rule 38, as these positions were mobile in nature, moving across the district. This claim is to continue until the positions are assigned by Bulletin procedure and the bulletin assigned operator reports to the assignment.”

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 employee 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 were given due notice of hearing thereon.

The Claimant holds seniority as a Group 5 Machine Operator, which position includes operation of a Tie Plater Machine. He was assigned to Region Gang TP-05. One employee was properly assigned to operation of a Group 5 Tie Plater Machine. The dispute herein concerns the operation of a second Tie Plater Machine and whether the second machine was operated for a period exceeding 30 days, which, if so, would have required bulletining the position.

The Organization contends that an employee less senior than the Claimant was assigned to a second Tie Plater Machine, thus depriving the Claimant of the opportunity to be so assigned. The Organization states variously that (a) the second machine was "operated on a daily basis beginning July 8, 1997 through the end of the work season in November 1997"; (b) the machine was in operation "at least until August 15, 1997"; and (c) according to a statement by the junior employee:

"The second Plater was in the line-up for over 30 days. I believe it was in the line-up the rest of the year."

However, the junior employee also stated he was assigned to the "TKO Inserter" at times during this same period. The Organization also provided no evidence as to what period of time, if any, that the junior employee received Group 5 pay to which he may have been entitled.

The Carrier, in response, contended that the first Plater machine "needed service" (apparently, repair); that this machine was "replaced . . . with a new one"; and that "for about two weeks they ran both machines." This defense was offered as a statement by the Carrier's Manpower Planner relating what had been reported to him by the Roadmaster. This was not supported by any factual evidence that the use of two machines was limited to this brief period.

The Organization has firm Rule support for the requirement to bulletin a position that extends beyond 30 days. As described above, however, the Board is not provided with clear proof that this actually occurred in relation to the second machine. While the Carrier's allegation that use of the second machine was limited to two weeks is also unsupported, the burden of proof for the claim rests with the Organization. The Board finds the evidence insufficient to sustain the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of September 2002.