

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36899
Docket No. MW-36327
04-3-00-3-572

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Agreement was violated when the Carrier assigned junior Crane Operator J. Scott to perform overtime service (operate crane in pulley repair) at Two Harbors Ore Docks on May 23, 1999, instead of Crane Operator G. Walgren (Claim No. 29-99).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Walgren shall now be compensated for twenty-three (23) hours and forty (40) minutes of overtime service performed by Mr. J. Scott on May 23, 1999 at the applicable crane operator's time and one-half rate of pay.”

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.

There is no dispute on the facts in this contract interpretation case involving proper seniority assignment to overtime at the Two Harbors Ore Docks. On May 23, 1999, a junior employee was called out to make pulley repairs on Dock No. 2 at Two Harbors. The unassigned extra work performed was the operation of a crane. The junior employee called for overtime was headquartered at Two Harbors. The Claimant was the senior employee in that classification headquartered in Proctor. The parties agree that at the time of this dispute there was no bulletined position working on that dock. The Crane Operator position was vacant.

It is the Organization's position that the Carrier failed to properly assign the position to the Claimant in accordance with Supplement 37 which states, in pertinent part, that:

- "3. Crane operator assignment will be bulletined and filled by crane operators holding seniority . . . senior applicant from either division. . . .**
- 4. Crane operators will be assigned to overtime connected with the operation of such equipment."**

Because these positions were system wide positions to handle work at Steelton Ore Storage Facilities or the Duluth and Two Harbors Ore Docks, and because the assignment of work would come from the senior applicant from either division, the overtime connected with the Two Harbors Dock Crane Operator work belonged to the Claimant. It is central to the Organization's position throughout this dispute, that Two Harbors and Two Harbors Docks are separate. It supplied past bulletins to show that assignment to Duluth Ore Docks includes Two Harbors Ore Docks, and is different from bulletin assignment to Two Harbors. This assignment to the junior employee headquartered at Two Harbors violated Rule 4(c) involving the assignment of temporary work. The Rule reads:

"(c) Positions or vacancies of thirty (30) calendar days or less will be filled in the following order:

- 1) Bulletined relief position if established.
- 2) Senior qualified employee from the headquarter point where the temporary position or vacancy occurs.
- 3) Senior qualified employee holding seniority in the classification."

Clearly, the Organization alleges that Rule 4(c)(1) does not apply because there was no job bulletined. Also, 4(c)(2) was not applicable because there was no assignment under Supplement 37 to any Crane Operator position headquartered at the Two Harbors Ore Docks where the work was performed. Therefore, the proper assignment was governed by Rule 4(c)(3) to the Claimant as the senior qualified employee on the Crane Operator system seniority roster. Because the Claimant was not given the overtime assignment, the Carrier violated the Agreement.

The Carrier denies the applicability of the Organization's interpretation of Supplement 37 and Rule 4. It agrees with the Organization that there was no employee holding a position working the docks under Supplement 37 at the time of this dispute. Because no employee worked under Supplement 37, the Carrier maintains that it properly assigned the work. There was no vacancy and no need to fill a vacancy. Supplement 37, therefore, was not applicable and not violated. The Carrier did not need a system position of a Crane Operator to work the Two Harbors Ore Dock. The Carrier did need the performance of unassigned extra crane work. It maintains that it correctly applied Rule 20(b) which states, in pertinent part, that:

"All other overtime will be given to the senior qualified available employee working in the classification at the headquarters point where the overtime is to be performed. At the Duluth Ore Docks, the ore docks and the storage facility will be considered separate headquarters points."

Because the junior employee was headquartered at Two Harbors, the Carrier argues that he was the proper employee to be called for the instant work on the Ore

Docks at Two Harbors. The Carrier stated that, "Since the Two Harbors Docks and Storage Facilities are not listed in Rule 20(b) they are not separate headquarter points and therefore are part of the Two Harbors headquarters." As such, the assignment of work was proper because the junior employee was the senior employee qualified as a Dock Crane Operator at the headquarterd point.

The Board carefully noted that central to this dispute is whether although headquarterd at Two Harbors on the Iron Range Division, the junior employee was within his coverage including Two Harbor Ore Docks, a location specified in Supplement 37. The assignment of work to the junior employee to perform temporary work under the Carrier's interpretation is applicable because it was proper under Rule 20(b). Supplement No. 37 is inapplicable because it was not a bid for an assignment, but a temporary vacancy and the parties have not "interpreted Supplement No. 37 as the exclusive method by which cranes are operated at Dock and Storage Facilities." The Carrier insists that it properly filled the position and that, "... when crane positions at Proctor and Two Harbors have included the Docks and Facilities at each port, and when Proctor or Two Harbors Crane Operators have been assigned on day-to-day dock jobs, there have been no disputes."

We also note, that the Carrier argued that this was not the manner in which the parties had ever interpreted the Agreement in the past. The Carrier stated that when crane work was needed it was "performed on a day-to-day basis by operators holding positions covering territory which may or may not have included Dock and storage Facility areas." The Carrier argued that Supplement 37 was not applied as the Organization has argued and that, "This practice goes back to the days of operator George Saari in the 1970's and beyond. Operators bid to Proctor and to Two Harbors have routinely worked on the docks in the manner challenged here over a very long history."

The foregoing unrebutted assertion stands as fact. The Board is persuaded that the parties interpreted the Agreement to hold that Supplement 37 applies only when Crane Operator positions are bulletined at the dock facility and otherwise is controlled by Rule 20 herein. We note that the junior employee headquarterd at Two Harbors (not the dock) was the successful bidder on a Bulletin that stated, "Successful bidder must be dock qualified." We find no explanation from the

Organization as to why an individual bid to the "Two Harbors - All Iron Range Division Trackage," would need to be "dock qualified" if they were not to work the Two Harbors Dock. Although the Carrier challenged the Organization to support its "contention that the Two Harbors Docks are somehow 'separate' from the Iron Range Division," we find insufficient proof in this record to demonstrate that fact or practice.

We studied the entire Agreement before us on the applicability of these Rules to the specifics of this dispute, including the Clarification adopted to Rule 20(b) on March 29, 1994, and find that the language is ambiguous, the practice on the property clear, and the record more strongly supporting the Carrier's position. The Organization failed to prove that the historical applicability to Two Harbors Docks was not covered by the assigned position of Two Harbors or a part of the "geographical area" covered within the Iron Range Track Department when a position existed under Supplement No. 37. Nor has the Organization provided substantial proof that Supplement 37 was applicable historically when no Crane Operator was bid to either Duluth or Two Harbors Docks. We are not persuaded that the Carrier violated the Agreement. The claim, therefore, must be denied.

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 25th day of February 2004.