

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41578
Docket No. MW-41371
13-3-NRAB-00003-100260**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Machine Operator M. Richeson and instead directed Track Foreman S. Syring to operate a tamper on the Clinton Subdivision on a regular basis beginning on February 10, 2009 and continuing and when it failed to properly bulletin said machine operator position (System File R-0916C-303/1518292 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Richeson shall now be compensated, beginning February 10, 2009 and continuing, at the applicable machine operator rate of pay for “*** forty (40) hours per week at the straight time rate and any overtime hours that this back-up tamper worked, until the position is properly bulletined and assigned.”**

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to call and assign the Claimant to operate a tamper on a regular basis beginning on February 10, 2009, and instead directed a Track Foreman to perform this work.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier failed to recognize the Claimant's superior seniority and failed to assign him to the vacant back-up tamper Operator position at issue (2) the Carrier violated the Agreement when it failed to bulletin the vacant position (3) there is no merit to the Carrier's defenses, and (4) the requested remedy is proper. The Carrier counters that the claim should be denied in its entirety because (1) the record does not establish that the Carrier was obligated to recall the Claimant to operate a machine (2) the record does not establish that the Claimant knew how to operate or was qualified on the machine (3) the work was incidental to the work that the Track Foreman was performing and was less than full-time work (4) none of the Rules cited by the Organization apply to less than a full workweek, and (5) the requested remedy is excessive.

The Board carefully reviewed the record and finds that the Organization failed to meet its burden to prove that the Carrier violated the Agreement when it failed to call the Claimant and instead had the Track Foreman operate a tamper on February 10, 2009. We also find that the Organization failed to meet its burden of

proof that the Carrier violated the Agreement by failing to properly bulletin the Machine Operator position.

The record reveals that the work involved was incidental to the work that the Track Foreman was already performing. Moreover, the Agreement requires the Carrier to bulletin and assign a person to a machine when it is operated for more than 30 days. The record contains insufficient evidence to show that the Track Foreman operated the machine for more than 30 days.

In addition, the Organization failed to provide any documentation or statements to support its position. There were no machine logs signed by the Track Foreman from the month of February. Hence, there is no proof that the work began in February.

It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization failed to meet that burden. Therefore, the claim 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 18th day of March 2013.