

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44294
Docket No. MW- 43563
20-3-NRAB-00003-200438**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (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 prematurely abolished a loader operator position on Gang TMOX4880 and continued to have the duties of that position performed by a track inspector on January 3 and 4, 2015 and continuing (System File C-15-P018-3/10-15-0095 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Sailors shall now be allowed twenty-four (24) hours at his overtime rate of pay for January 3 and 4, 2015 as well as any additional hours worked by employees performing the work of the abolished position January 5, 2015 and continuing.”**

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 has established and holds seniority within the Carrier's Maintenance of Way Department. Prior to the events that gave rise to this dispute, he was assigned and working as a Bobcat Skid Loader operator on Gang TMOX4880. At the close of shift on January 2, 2015, the Claimant's Group 3/4 Machine Operator position was abolished by the Carrier. The Organization alleges a Track Inspector operated the Loader on January 3 and 4, 2015, to remove snow and "knock frozen rock out of a ballast train by banging the bucket against the side of the cars."

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Carrier's decision to abolish Group 3/4 Machine Operator position and immediately assign the work of the position to other than a Group 3/4 Machine Operator violated Rules 2, 5, and 55 of the parties' Agreement, and failed to recognize the Claimant's seniority rights.

The Organization further contends that the Claimant held the position until January 5, 2015, and no one had a superior right to the position and the performance of the related duties. The Organization contends that the Carrier must have a good-faith reason to abolish a position. The Organization further contends that the performance of the duties was taken over by Track Inspector Zuhlke, while the Claimant was withheld from his position.

The Organization contends that Rule 20 directs the Carrier to bulletin such a "permanent" position or vacancy of more than 30 days duration without respect to any Rule 19A-mandated written request considerations that the Claimant allegedly did not comply with. The Organization does not challenge the abolishment of the position but contends that the loader that the Claimant had been assigned was still used.

The Carrier contends that it has the right to abolish positions and has the right to have employees perform intermittent service on another position without making the employee bid to that position. The Carrier points out that at times, work is needed

to be performed on a short-term basis and it would be impractical to have an employee bid/bump to that position. The Carrier contends that the claimed work could have been contracted or assigned to any Carrier employee; it was not reserved to the Claimant.

In the on-property handling of this claim, the Carrier asserted that Track Inspector Zuhlke was actively engaged in track inspector duties on the claimed dates. The Organization provided no evidence to refute this assertion. The Carrier is not obligated to bulletin or fill temporary positions of less than thirty days and the Organization has not shown that this position continued as a permanent position. The Carrier asserts that, at most, some employees may have performed intermittent service on the abolished position.

The Organization bears the burden of proving all elements of its claim. Here it has not shown that the duties of the abolished position were filled by assignment to a permanent position. Under Rule 19, the Carrier is not required to bulletin a temporary position

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 23rd day of October 2020.