

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44337  
Docket No. 44448  
20-3-NRAB-00003-170563**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(BROTHERHOOD OF MAINTENANCE OF WAY  
(EMPLOYES DIVISION – IBT RAIL CONFERENCE  
PARTIES TO DISPUTE: (  
(UNION PACIFIC RAILROAD COMPANY (former  
Southern Pacific Western Lines)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to bulletin and assign a motor grader operator position and instead utilized a junior employe for more than thirty (30) days to operate said machine beginning on March 1, 2016 through March 31, 2016 and continuing (System File RC-1610S-701/1657115 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Miller shall now be compensated for all hours worked by the junior employe at his respective rate of pay, beginning on March 1, 2016 and continuing until the violation ceases.”**

**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 April 14, 2016 on behalf of B. Miller (Claimant) claiming the Carrier failed to bulletin and assign a road grader operator vacancy/position and instead used a junior employee for more than thirty (30) days. The parties were unable to resolve the matter after processing it in the normal and customary manner on property. This dispute is now properly before this Board for final adjudication.**

**The Carrier argues the Organization failed to present sufficient evidence that it violated the Agreement. Rule 10 of the Agreement requires the Carrier bulletin positions needed for more than thirty (30) calendar days. The Carrier presented evidence that a grader was rented and used on an intermittent basis during the relevant time period. The Carrier also argues Article XI of the July 29, 1991 Imposed Agreement gives it authority to perform incidental tasks:**

**Employees shall be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing provided the tasks are within the jurisdiction of the collective bargaining agreement...**

**The Board has reviewed the on-property record and finds the Organization failed to present proof that the Carrier was required to bulletin a road grader operator position.**

Form 1  
Page 3

Award No. 44337  
Docket No. 44448  
20-3-NRAB-00003-170563

**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 6th day of January 2021.**