

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44500
Docket No. MW-46049
21-3-NRAB-00003-200208**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

**PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Supervisor T. Hamedi to operate a Group IO Class I Grapple truck to load and haul a backhoe from Fort Worth, Texas to Bowie, Texas on the Red River Subdivision on August 30, 2018 instead of assigning Mr. B. Woods thereto (System File 2409-SL I 0-1814\14-19-003 7 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Woods shall be compensated for five (5) hours at the straight time 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.

Factual Background

On August 30, 2018, the Carrier assigned Track Supervisor T. Hamedi to operate a Group 10 Class 1 Grapple truck to load and haul a backhoe from Fort Worth, Texas to Bowie, Texas on the Red River Subdivision. At the time, the Claimant was assigned as a special equipment operator. The Organization asserted that the work involved has historically and customarily been performed by special equipment operators. It maintains the Claimant was qualified and willing to perform the work, and would have performed it had the Carrier afforded him the opportunity to do so.

The applicable provision of the parties' Agreement states as follows in pertinent part:

RULE 1 – SCOPE

This Agreement governs the hours of service, wages and working conditions of employes of the following classes in the Maintenance of Way and Structures Department: Track Supervisors and Motor Track Inspectors, to the extent set forth in Appendix No. 23; Bridge and Building Foremen; Paint Foremen; Bridge Inspectors; Assistant Bridge and Building Foremen; Steel Bridgemen (not including Steel Bridge or Assistant Steel Bridge Foremen); Bridge and Building Mechanics; Bridge and Building Painters; Bridge and Building Helpers; Welder Gang Foremen; Welders; Heat Treaters; Welder Helpers; Extra Gang Foremen; Fence Gang Foremen; Section Foremen; Assistant Extra Gang Foremen and Assistant Section Foremen; Trackmen; System Rail and Plow Gang Employes; Fuel Foremen; Pumpers and Water Treaters; Machine Operators; Bridge and Building and Water Service Laborers; Fuel Station and Sand House Helpers and Laborers; Track, Bridge, Tunnel and Crossing Watchmen and Flagmen and such other classifications as may be shown in the appended wage scale or which may hereafter be added thereto. * * *

RULE 10 - POSITIONS UNDER ADVERTISEMENT AND UNBULLETTED TEMPORARY VACANCIES

10(a) - Vacancies on Positions Under Advertisement and Temporary Vacancies of Thirty Calendar Days or Less as described in Rule 37(f). Except as set forth in NOTE below, vacancies on positions under advertisement and temporary vacancies of thirty calendar days or less, that are to be filled, shall be “filled by the senior qualified employee of the class working on a position at a lower rate of pay or furloughed who desires to protect the vacancy. If there are not employees of the class who desire to protect the vacancy, the vacancy may be filled by either setting up the junior employee of the class who is working in a lower class and at a lower rate of pay or on a position at a lower rate of pay in another seniority group or by promoting an employee of a lower class, pursuant to Rule 8.

Position of the Organization

The Organization contends that the Carrier’s actions were violative of the Agreement in that it assigned Track Supervisor Hamedi to operate the grapple truck on August 30, 2018. The Organization views the work in question as a vacancy, and maintains Rule 10(A) controls how it must be filled. It maintained Hamedi was working within another class at the time. It also asserted that moving the back hoe from Ft. Worth, Texas to Bowie, Texas could have been delayed so that the Claimant could move it on a later date because this was not an “emergency.”

Position of the Carrier

On August 30, 2018, the Bowie, Texas back hoe broke down, and a replacement was needed as soon as possible. It was decided to move one from Ft. Worth, Texas to Bowie, Texas on a temporary basis. Roadmaster De Baun directed Track Supervisor Hamedi, who was immediately available and had the necessary qualifications, to load the back hoe on a Group 10 Class 1 Grapple Truck, then drive it to Bowie, Texas. The Claimant was not available because he was working elsewhere that day. Though the Organization claims this was not an emergency, the fact remains that a back hoe was needed as soon as possible in Bowie to replace the

one that had broken down. The Carrier notes that the disputed work only took three hours 30 minutes to complete.

Analysis

The Organization sees this job as a five-hour vacancy controlled by Rule 10(A), while the Carrier maintains the work only lasted three and a half hours. The Carrier argued that such a brief assignment does not constitute a vacancy; this argument is persuasive. According to BNSF Supervision, the work in question only took three and one half hours. Whether this work was of three and a half hours or five hours, the result is the same. The Board does not find that this temporary need for a few hours of work constituted a vacancy within the meaning of Rule 10.

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 29th day of July 2021.