

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44525
Docket No. MW-44017
22-3-NRAB-00003-210220**

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 Weed Mower TMOX5302 Operator C. Burnett who was headquartered at Henrietta, Missouri on the former ATSF East Region Seniority District #1 (Prior Rights District #111) to perform work (weed mowing) on the BN Hannibal Seniority District #6 (Prior Rights District #6) starting at Mile Post 106.8, Needles, Missouri and at various locations on the Brookfield Sub, Chicago Division beginning on June 15, 2015 and continuing (System File C-15-B050-1/10-15-0359 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Riddle shall now ' ... be paid all hours, straight time and over time worked by the operator of this machine at his appropriate rate of pay as settlement of this claim.’”**

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:

During the rise of this dispute, the Claimant was regularly assigned to BN Hannibal Seniority District #6 (Prior Rights District #6). Beginning on June 15, 2015 and continuing, the Carrier assigned him to perform weed mowing work on the BN Hannibal Seniority District #6 (Prior Rights District #6). At the time of the assignment, he was headquartered in Henrietta, Missouri on the ATSF Eastern Region Seniority District # 1 (Prior Rights District # 111)

Rules 5 and 6 of the Agreement state as follows in pertinent part:

RULE 5. SENIORITY ROSTERS

- A. Seniority rosters of employes of each sub-department by seniority districts and rank will be compiled. Two (2) copies will be furnished foremen and employes' representatives, and foremen will post a copy in tool house and outfit cars, or at convenient places for inspection of employes affected. Copies will also be made available to employes not working under the supervision of a foreman.
- B. Seniority rosters will show names, employe numbers, seniority dates, occupations and locations of employes. [Letter of Agreement 4/13/98]
- C. Seniority rosters will be revised and posted in March of each year and will be open for correction for a period of sixty (60) calendar days from date of posting. Employes on leave of absence or on furlough at the time roster is posted will be granted sixty (60) calendar days after their return to active service in which to make protest as to seniority dates. Protests on seniority dates for correction will be confined to names added since posting of previous annual roster. Erroneous omission of names from the seniority rosters, or typographical errors on such rosters, may be corrected at any time.
- D. On each seniority district as indicated in Rule 6 A, four (4) separate seniority rosters shall be maintained for Track Sub-department

employees as indicated below, with separate seniority dates only for each rank contained on the roster: [8/12/99 District Consolidation-Related Agreement, Article E, Attachment I]

Roster 1

Roster 2

Roster 3 * * *

ROADWAY EQUIPMENT SUB-DEPARTMENT

(5 Districts)

Machine Operator Group 1

Machine Operator Group 2

Helper, oiler, pitman and miscellaneous employee * * *

Group Three Machines

Production Tamping Machines with attachments (Surfacing and lining) such as Electromatic, Plasser, Jackson.

Ballast Regulator and Broom-such as Kershaw 4FW-C12.

Switch Tamper-such as Jackson 2300.

Weed Mower (on-track, self propelled) such as Fairmont W24- C-1.

Tie Tampers-such as Jackson Mtr., Tamper Jr., Plasser Spot, Mc Williams.

Track Liner-such as Nordberg AL.

Tie Bed Scarifier, like Kershaw, Fairmont-HS & W87-B.

Automatic Spike Driver with attachments, like Nordberg 'A' & RMC 'HU.'

Dual Tie Saw-Such as Kershaw DTS.

Tamping Power Jacks-such as Kalamazoo IOFB and Kershaw.

Tie Injector-such as Kershaw Model TIE.

Tie Spacer (Pullman H332, Nordberg).

Mannix Auto Track and Sled.

Winch Cart-such as Mannix.

Koehring Dumpster-such as Koehring 55A.

Brush Cutter-such as Northwestern 161-B and Kershaw FFC.

Special Weed Sprayer-former SP&S only.

Track Stabilizer-such as Plasser PTS-62

Skid-Steer Loader (such as Bob-Cat)

Group Four Machines

Wheeled Tractors-such as Massey Ferguson 2200.

Gravel Conveyors.
Jordan Spreader-Ditcher.
Grouting Machine--such as Fairmont W-65.
Snow Dozer (Snow Plow-locomotive).
Weed Burner--such as Woolery WBZ.
Trench Excavator--such as Davis.
Black Top Roller--such as Buffalo

- H. For the Roadway Equipment Repair Shops, one seniority roster shall be maintained for each of the Northwest, Montana and Fargo Seniority Districts, with separate seniority dates only for each rank contained on the roster. [12/01/99 Letter of Agreement, Appendix PP] * * *

RULE 6. BASIC SENIORITY DISTRICTS

- A. Except as otherwise provided for in this rule, seniority districts for all track, bridge and building, welding and roadway equipment shall be as follows: [See Appendix K, Paragraph 4X] * * *

500. Galesburg Seniority District, comprised of former:

BN CHICAGO SENIORITY DISTRICT #1: Chicago to Savanna; Chicago to Galesburg, not including Galesburg Terminal; Montgomery-Streator-Zearing; West Chicago, Nifa; Flag Center-Rockford; Oregon-Mt. Mooris; Mendota to but not including Denrock; Earlville-Sterling. **BN LACROSSE SENIORITY DISTRICT #2:** St. Croix Tower to Savanna, Savanna to but not including Galesburg; Rock Island, Moline, Barstow, Sterling to Denrock.

BN OTTUMWA SENIORITY DISTRICT #3: westward from Galesburg including Galesburg Terminal to M.P. 391, but not including Creston; Albia-Des Moines.

BN BEARDSTOWN SENIORITY DISTRICT #5: Southward from Galesburg to Paducah, Quincy and East St. Louis, and from Galesburg to Peoria, lines from Elmwood to Wyoming. **B**

N HANNIBAL SENIORITY DISTRICT #6: Southward from Burlington to but not including East St. Louis. Westward to but not

including St. Joseph and Kansas City, Mo. (Less MP 16.85-MP 4.22
(North St. Louis)
ATSF Eastern Region Seniority District #1 * * *

Within the newly consolidated seniority districts, seniority exercise will be governed by the following principles: [See also Appendix NN (Seniority Districts Consolidation Agreement, Section 4, 8/12/99)]

- a.) Each BMW E represented employee who holds seniority on the effective date of this Agreement shall retain prior rights for all exercises of seniority to all headquartered positions on his/her former seniority district until the employee resigns, retires, dies or is dismissed for cause under existing agreements.
- b.) Where a particular former seniority district is split between two newly consolidated districts, the employees working on headquartered assignments on the smaller split portion may remain on their headquartered assignments. If they do so, they will be grandfathered on those assignments, and cannot be bumped by other employees from their newly consolidated seniority district. They will establish and accumulate seniority on the newly consolidated district where they are grandfathered, and will retain and accumulate seniority on the newly consolidated seniority district which incorporates the larger split portion of their former seniority district.
- c.) For headquartered positions on the newly consolidated seniority districts to which prior rights or grandfathered status do apply, the successful bidder will be determined by the earliest seniority date on the rosters applicable to the position who also possess the requisite prior rights or grandfathered status.
- d.) For mobile positions on the newly consolidated seniority districts and for headquartered positions to which prior rights or grandfathered status do apply, but for which there is no bidder with such rights, the successful bidder will be determined by the earliest seniority date on the rosters applicable to the position.
- e.) Other exercises of seniority by employees will be controlled by the principles set forth in paragraphs a), c) and d) above. f.) All

employees establishing any seniority after the effective date of this agreement (September 11, 1999) will establish such seniority on the applicable roster on that newly consolidated seniority district."

Position of Organization:

The Organization asserts that Rule 2A provides that rights accruing to employees through their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company. It notes Rule 6A provides for the establishment of various seniority districts, including Seniority District 500 where the incident involved here occurred. As the Organization sees it, if it was the Carrier's intent to mow weeds on Prior Rights District 6 on the Brookfield Subdivision, then the claimed Weed Mower should have been bulletined on Prior Rights District 6, not Prior Rights District 111; and if it was the Carrier's intent for this Weed Mower position to work over multiple territories and prior rights districts, then this position should have been bulletined on the Consolidated District 500 bulletins. It views the Carrier's actions as a clear violation, and concludes the Claimant is entitled to be paid for all of the straight time hours and overtime hours worked by the operator of the claimed Weed Mower during the above-cited claim period, and continuing until the violation ceases.

Position of Carrier:

The Carrier points out that throughout the on-property handling of this case, neither party put the bulletin into record. It maintains that it is the responsibility of the Organization to provide evidence in support of its claim. In the Carrier's assessment, the Organization cannot meet its burden of proof without evidentiary support.

Analysis

The Organization is challenging the way the weed mower work was bulletined, however there is no copy of the bulletin in the record. The Carrier is correct in its assertion that the Organization bears the burden of proving its allegations. Without the bulletin being included in the record, the Organization cannot be said to have met this burden.

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 8th day of October 2021.