

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45336  
Docket No. MW-48008  
25-3-NRAB-00003-220523**

**The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Canadian National / Wisconsin Central, Ltd. (WC)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier improperly assigned Machine Operator C, Mr. J. Scott from 7:00 A.M. until 3:30 P.M. instead of the bulletined schedule of 8:00 P.M. until 4:30 A.M. at Green Bay, Wisconsin beginning on January 9, 2021 and continuing on a regular daily basis, instead of abolishing and re-bulletining the position (Carrier’s File WC-BMWED-2021-00012 WCR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Canadeo shall now be allowed pay at the time and one-half rate of pay at the Machine Operator C-Tractor rate of pay for eighty-six (86) minutes each day and compensated at the IRS rate for mileage for a total of seventy-six (76) miles each day for his time spent in transit to Appleton each day, as well as additionally compensated for the differential in pay between the Machine Operator C-Tractor rate of pay and the Trackman rate of pay for all hours worked by Mr. Scott beginning sixty (60) days retroactive from the date of this letter [March 9, 2021] and continuing on a regular daily basis.”**

**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.

Claimant C. Canadeo has established and maintains seniority in the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, the Claimant was working as a Trackman headquartered in Appleton, Wisconsin.

According to the record evidence, Carrier bulletined two (2) positions for the Green Bay, Wisconsin Night Section specifically, a Headquartered Foreman and a Machine Operator C-Tractor position. Subsequent to bulletining these two (2) positions, Carrier awarded the Operator C-Tractor position to employee Jon Scott but the Headquartered Foreman position went unfilled for a period of time. However, according to the evidentiary record on January 9, 2021, while still waiting to fill the Foreman position, it reassigned employee Scott to perform his awarded position from the bulletined night time hours of 8:00 PM to 4:30 AM to the day time hours of 7:00 AM to 3:30 PM. Carrier accomplished this reassignment of Scott without re-bulletining the position justifying Scott's reassignment of work hours on grounds it was unsafe for Scott to work alone at nights. Eventually, due to the fact the Foreman position went unfilled, Carrier abolished both the Foreman position and the Operator C-Tractor position.

The Organization filed the subject claim sixty (60) days after Carrier changed Scott's work hours from the night shift to the day shift asserting that the change was effected without re-bulletining Scott's position and in so doing, Carrier committed a violation of Rule 6A – Bulletining of Positions. Rule 6A reads in its entirety as follows:

All new positions or vacancies known or expected to last more than 30 days will be bulletined. Bulletins will be posted for a period of 7 calendar days

at locations available to the employees, during which time employees may file their written applications with the individual whose name appears on the bulletin. Such bulletin will show the headquarters point, title of the position, rate of pay, gang, machine, effective date, rest days and assigned hours of the position bulletined. Bulletins will list both the general qualifications and the specific qualification as determined by the company. Bulletining, application and awarding of positions may be by means of an electronic process but the paper process will also be maintained for those who desire to continue to use the paper process.

The Organization asserts that in order to change employee Scott's work schedule from night hours to day hours, Carrier accomplished this change without re-bulletining the Operator C-Tractor position by bypassing it and dealing directly with employee Scott which it claims constitutes an additional and separate violation of the Agreement. The Organization speculates that Carrier effected this change in employee Scott's work schedule in order not to have to pay overtime to a Foreman working nights to relieve the continuing unfilled Night Foreman vacancy. In so speculating, the Organization rejects Carrier's stated reason for effecting the change in Scott's working hours, to wit, that it was protecting Scott's safety from having to work the night shift alone without the presence of a night Foreman.

The Organization alleges that at the time Carrier unilaterally changed Scott's work schedule, which continued for the entire period Scott worked day time hours as an Operator C-Tractor position, Claimant Canadeo was working the position of Trackman headquartered in Appleton, Wisconsin. Though the Claimant lived in Green Bay, Wisconsin, according to the Organization, he worked in Appleton because he preferred working day shift hours. The Organization alleges that had Carrier re-bulletined the Operator C-Tractor position for day time hours rather than wrongly unilaterally reassigning Scott to work outside his awarded night time work schedule, the Claimant would have bid the day time Operator C-Tractor position at Green Bay. Not having done so, the Claimant had to travel round-trip from Green Bay to Appleton and back to Green Bay every day employee Scott worked the day shift at Green Bay in order to maintain working his desired day shift Trackman position at Appleton thus resulting in the Organization's requested remedy as stated above in Part (2) of this claim. The Organization submits that had the Claimant applied for the re-bulletined day shift Operator C-Tractor position at Green Bay, he would have been awarded the position over employee Scott who is junior in seniority to the Claimant. The Organization further submits the remedy it proposes is necessary not only to

compensate the Claimant for his lost work opportunities, but also to enforce the integrity of the Agreement.

Carrier argues it complied with Rule 6A of the Agreement when it correctly specified in the bulletin advertising the two (2) positions at Green Bay, to wit, the Night Foreman position and the Operator C-Tractor position. Carrier submits it was further in compliance with Rule 6A when it awarded the Operator C-Tractor position to Jon Scott. Carrier notes that it was justified under the circumstances during the time the Foreman position went unfilled to exercise its right to move employees by so moving employee Scott from the night shift to the day shift for safety reasons. Specifically, Carrier holds Scott's safety was achieved by his not having to work alone on the night shift absent the presence of a Night Foreman. With Scott moved to work days and unable to fill the Night Foreman position, Carrier states there was no night crew working and therefore no monetary harm occurred to any employee as a result. Carrier argues the Organization failed to show that the Claimant was entitled to the Operator C-Tractor position or that compensation is due for service not performed. Accordingly, Carrier submits the remedy requested by the Organization is excessive and, predicated on its failure to bear its burden of proof it committed a violation of the Agreement, calls for the Board to either dismiss or deny the instant claim in its entirety.

It is clear to the Board that Carrier complied with the first part of Rule 6A of the Agreement by bulletining the two (2) night crew positions respectively of Foreman and Operator C-Tractor. It is further clear from a straight-forward reading of Rule 6A that Carrier properly awarded the night time position to employee Jon Scott upon determining he met the qualifications of the posted Operator C-Tractor position and that he possessed the necessary seniority status as opposed to other bidders, if any, for the position. The Board is persuaded that this is the juncture at which Carrier's compliance with Rule 6A ceased and its commission of violation of Rule 6A commenced. There is nothing in the unambiguous language of Rule 6A that supports or permits Carrier moving/working an employee outside the bounds of his/her awarded position either for a temporary or indefinite period of time. Moreover, there is no language in provision 6A that permits Carrier to fashion such arrangements in one's work schedule outside their awarded bulletined position directly with an employee represented by the Organization.

Having concurred with the Organization's position Carrier violated Rule 6A of the Agreement in the several ways noted above, we also find we are not in concurrence with the Organization's supposition that had the Claimant bid for the re-bulletined

position of Operator C-Tractor at Green Bay with day time hours he would have been awarded the position based on his superior seniority. Certainly, if there were only two employees that had applied for the position and they were respectively the Claimant and Jon Scott, then yes, based on the Claimant's having possessed greater seniority over Scott, the Claimant would have been awarded the position. However, the record is devoid of any evidence showing that the Claimant would have possessed the greater seniority status as opposed to other qualified employees who might have bid on the re-bulletined day time Operator C-Tractor position at Green Bay, Wisconsin.

Our finding here applies only to the named the Claimant and not to any other employee who potentially would have had the opportunity to bid on the lost opportunity to have been awarded the position at issue. Having so stated, we find Carrier liable for compensating some employee which might still be the Claimant here who would have been awarded the Operator C-Tractor position had they bid on the position and possessed the greater seniority over all other bidders. We therefore remand the claim back to the Parties to fashion an appropriate remedy suitable to the employee identified as the one who suffered the harm as a result of Carrier's violations of Rule 6A of the Agreement.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 31<sup>st</sup> day of October 2024.