

**BEFORE PUBLIC LAW BOARD NO. 7386**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE  
and  
SOUTH KANSAS & OKLAHOMA RAILROAD**

**Case No. 3**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Article 3 – Position & Scope and Article 6 – Compensation beginning on January 1, 2010 and continuing when it failed/refused to bulletin truck driver positions on the gangs located at Winfield, Coffeerville and Pittsburg, Kansas (System File SK-4007-2).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall compensate Claimants N. Laney, M. Hempen and B. Craddock at the truck driver rate of pay beginning January 1, 2010 and continuing until the positions are bulletined in accordance with the Agreement.”

**FINDINGS:**

The Organization filed a claim on the Claimants’ behalf, alleging that the Carrier violated the parties’ Agreement when it failed and/or refused to bulletin three permanent boom truck operator vacancies that existed at the headquarter locations in Winfield, Coffeerville, and Pittsburg, Kansas. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the clear language of the Agreement obligated the Carrier to bulletin and award the three permanent boom truck operator vacancies in question, because there can be no dispute that a boom truck operator was required to be assigned to the gangs in question because a boom truck was assigned to and regularly utilized by each of these gangs, because there is no merit to the Carrier’s defenses, and because the requested remedy is

warranted. The Carrier contends that the instant claim should be denied in its entirety because the Agreement's Scope Rule is general in nature and it does not give the operation of boom trucks exclusively to Organization-represented employees or require the establishment of such positions, because job classifications by location are determined solely by the Carrier, because the Organization has failed to meet its burden of proof, because the Organization is attempting to force the Carrier into the creation of a rule that never has existed under the current Agreement, and because none of the Claimants are qualified to operate a boom truck.

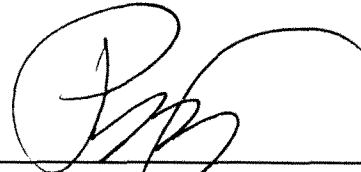
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement and failed to bulletin truck driver positions on gangs located in Winfield, Coffeetown, and Pittsburg, Kansas. Therefore, the claim must be denied.

The Organization cites Articles 1, 3, 6, 7, and 27 of the parties' Agreement in support of its argument. A thorough review of all of those articles makes it clear that none of them require that the Carrier bulletin the positions at issue because of the physical placement of the equipment at those locations. The rules simply do not require the Carrier to advertise or establish any regular position as is being sought by the Organization. The Carrier determines when it has the need for a particular position. For all of those reasons, this claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**

DATED: Sept. 17, 2012

  
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**ORGANIZATION MEMBER**

DATED: 9-17-12