

## PUBLIC LAW BOARD NUMBER 1837

Case Number 48

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The Carrier has violated the provisions of the current Scheduled Agreement dated April 1, 1951, and subsequent agreements and Memorandum of Understanding governing the rate of pay and working conditions of employees on the Wheeling and Lake Erie District on July 21, 1976, and subsequent to thereto when assigning Equipment Maintainer V. D. Hansen, having no seniority (within the scope of the provisions of the Scheduled Agreement) to maintain and repair machines assigned to Rail Gang No. 2 on the Wheeling and Lake Erie Seniority District.

2. Equipment Maintainer W. R. Ross, being qualified, available; and having seniority on the Wheeling and Lake Erie Seniority District shall be paid for all straight time and overtime hours worked by V. D. Hansen beginning July 21, 1976, up to the date V. D. Hansen had been returned to his assigned seniority district.

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

This case arises out of a dispute over the Carrier's use of an "Equipment Maintainer" (Hansen) with seniority under the Nickel Plate agreement for work in equipment being used on the Wheeling and Lake Erie seniority district. The Claimant, also classified as an Equipment Maintainer, held seniority and was regularly employed on the Wheeling and Lake Erie district along with four (4) others similarly classified. Commencing July 21, 1976 the Carrier assigned Hansen to support the work of the R-2 Rail Gang.

According to the Organization, Rules 2(A) through 2(C) reserve such work for employees within the classification and seniority district, and overtime within or accretion to such District was available to the Carrier in compliance with the terms of the Agreement. According to the Carrier, all Equipment Maintainers assigned to the Wheeling and Lake Erie seniority district were fully occupied but there remained a need for additional support on the days involved. The Carrier also points to Rule 54 which states "Except as provided in these rules, no compensation will be allowed for work not performed."

Case 46 disposed of by this Board favorably to the Claimant had as its basis a provision of the Agreement which specifically provides for payment of grievances not responded to in a timely manner; Case 50 also contained a claim for time

not worked and was disposed of favorably to the Claimants.

Here, the Organization has demonstrated that prior Awards on this property have reserved the right to such work to the seniority district involved; we shall follow the same rationale here. The Claimant shall be compensated only for those days when he would have been available to perform such duty.

AWARD

A violation of applicable rules occurred as set out in the Opinion; compensation is awarded as set out in the Opinion.

James F. Searce  
James F. Searce  
Neutral Member

E. N. Jacobs, Jr.  
E. N. Jacobs, Jr.  
Carrier Member

William E. LaRue  
William E. LaRue  
Employee Member

Dated 4/24/82 at Atlanta, Ga