

PUBLIC LAW BOARD NUMBER 1837

CASE NUMBER 52  
(MW-BVE-76-7)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The Carrier violated the Effective Working Agreement of the New York, Chicago & St. Louis Railroad Company (Nickel Plate Road) dated February 1, 1951, when on March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, and 17, 1976 and thereafter the Carrier used an employee who is covered by the Wabash Agreement to operate a bulldozer east of South Whitley, Indiana, which is territory covered by the provisions of the working agreement.
2. Carrier failed and refused to assign Bulldozer Spreader Operator Napoleon Lockhart who has established seniority as such as of March 29, 1972, on the territory covered by the working agreement to perform said work during the time the Wabash employee operated the bulldozer.
3. Claimant Napoleon Lockhart be compensated for all hours worked by the Wabash employee beginning March 1, 1976, up to the date said Wabash employee returned to the territory covered by the Wabash Agreement.

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

The carrier and the 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:

The principle involved in this case is identical to that confronted by the Board in Case 48; the fact situation however, is different. In this case, the Claimant was employed and held seniority as a Bulldozer Spreader Operator on the Carrier's Nickel Plate Road (Lake Region) and was properly assigned in operation of a motor grader during the time of events germane to this dispute. Apparently, a need arose for operation of a bulldozer within the Lake Region near South Whitley, Indiana during this period. According to the Carrier all qualified employees under the Agreement were fully occupied; therefore, it used an employee whose seniority and other rights were covered by the "Wabash Agreement" in effect between the Organization and Carrier. Per the Carrier, the work in dispute had to go forward and a lack of qualified employees on the Lake Region necessitated use of other employees.

We are impelled to the same conclusion as under Case 48: compensation to be afforded the Claimant for all days he would have been available for such duty at the appropriate rate.

AWARD:

A violation of applicable Rules has been demonstrated and compensation shall be 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