

AWARD NO. 26

CASE NO. 15

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Machine Operators J. Layton and Roger Lay to operate leased P & H Rubber Tired Crane instead of G. D. Winegar to perform overtime service on April 14, 15, 16, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30 and May 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, and 14, 1977.
(System File 33-R-3 MW-6(d)-21 8/16/77)
- (2) Machine Operator G. D. Winegar be allowed one-hundred twelve (112) hours and thirty (30) minutes pay at his time and one-half rate because of the violation referred to in Part (1)."

OPINION OF THE BOARD:

In February 1977 Claimant, a Group 1 Machine Operator, was regularly assigned to operate diesel-electric crane modified as a pile driver in the Beardstown Seniority District (BN Derrick 975403). He bid off of that position pursuant to an advertisement dated February 28, 1977 and, by bulletin dated March 15, 1977, he was assigned as Machine Operator on a P&H Rubber Tired Crane working with Steel Gang No. 1. Claimant's position on BN Derrick 975403 was then let for bid and awarded on April 1, 1977 to Mr. R. H. Prewett, who formerly had occupied a position on BN Pile Driver 975905. Mr. Prewett's position on 975905 was then let for bid and assigned

to Mr. W. W. Kays, the occupant of a position of BN Pile Driver 975904. Mr. Kays' position on that Pile Driver then was let for bid. Prior to Prewett taking over for Claimant on BN Derrick 975403, he changed his mind and bid in on the BN Pile Driver 975904 which Kays had bid off from. Carrier permitted Prewett and Kays to simply exchange Pile Driver positions and this left Claimant with no replacement. Carrier re-bulletined Claimant's position on BN Derrick 975403 on April 18, 1977 and, by bulletin of May 3, 1977, assigned Mr. D. D. Jones to that position. Claimant thereafter was kept on the Derrick until May 16, 1977 to train Jones.

From March 15, 1977 to May 16, 1977, a period of 61 days, Claimant was kept on his old position and was not permitted to take his new assignment. On each of the claim dates cited above, the P&H Rubber Tired Crane was operated by employees junior to Claimant. Carrier apparently assigned a relief operator to run the machines regularly assigned to those junior employees. It is unrefuted that on each of those dates the junior employees operated the Rubber Tired Crane on overtime hours, i.e., after 3:00 PM on regular workdays or on rest days. The overtime actually worked by the junior operators on the Rubber Tired Crane during the period April 14, 1977 to May 14, 1977 totalled 112 hours and 30 minutes. The instant claim initiated by Claimant on May 9, 1977 seeks recovery of the overtime compensation actually paid to the junior employees who operated the Rubber Tired Crane from April 14, 1977 through May 14, 1977. Claimant's supervisor rejected the claim on May 10, 1977 on the dual grounds that there was no qualified relief operator to take over on the Derrick and that management was holding Claimant over under the "special services" of Rule 21E. Rule 21E reads as follows:

"RULE 21. BULLETIN PROCEDURE

* * *

"E. Employees assigned to positions on bulletin, unless being used for special service, must take position assigned to within thirty (30) calendar days, unless prevented from doing so by illness or other authorized leave."

From the facts of record it is evident that Carrier's local management elected to honor the bidding preference of R. H. Prewett to Claimant's detriment. Prewett, with seniority date of June 8, 1974, was permitted to change his mind regarding his bid into Claimant's position. Accordingly, Claimant with seniority date of March 26, 1973 was not permitted to take his new regular assignment, but rather was retained on his old position for 61 days. The manifest intent of the seniority preference accorded by the parties in bidding under Rules 2 and 21 is to give priority to the bidding preference of senior rather than junior employees. Analysis of this record convinces us that the proximate cause of the long delay in Claimant taking his new assignment was none other than the misplaced preference of Carrier for the convenience of the junior employee Prewett rather than Claimant who was senior. The term "special service" is not defined on this record. We are not persuaded by Carrier's assertion that the "special service" in Rule 21E justified its actions regarding Claimant. At bottom line, it is clear that the nature of the work performed was not the overriding cause of the delay. But for Carrier's priority treatment of the junior employee Prewett, Claimant would have been permitted to take his new position well within the thirty (30) days referenced in Rule 21E. Such placement within thirty (30) days, with the limited exceptions mentioned in the Rule, is clearly the manifest intent of the parties in Rule 21E, as supported by the Letter of Understanding dated January 9, 1978.

2206-AWD. 26

In our considered judgement, Carrier's failure to place Claimant on his assigned position by April 14, 1977 constituted, in the facts of this case, a violation of Rules 2 and 21. The proper measure of damages is the overtime actually worked by the Rubber Tired Crane which Claimant should have been operating on and after April 14, 1977. See Awards 3-10009; 3-13315; 3-13758; 3-20637. Accordingly, we shall sustain the claim


FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


L. K. Hall, Carrier Member


F. H. Funk, Employee Member

Date: July 15, 1980