

Joseph Lazar, Referee

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO ) and  
DISPUTE ) BURLINGTON NORTHERN RAILROAD (Former Fort Worth  
and Denver Railway Company)

1. That the Carrier violated the provisions of the current Agreement when it transferred Crane Operator G. D. Lewis from the Joint Texas Division to the Fort Worth & Denver Railway Company, and in so doing caused Claimant A. C. Thorn loss of work opportunity and compensation connected therewith.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

The Organization contends that the Carrier transferred Group I Machine Operator G. D. Lewis, from Joint Texas Division Seniority District, to operate Pile Driver Crane on former Fort Worth and Denver Railway property, instead of using FW&D Carpenter A. C. Thorn, Claimant, thereby depriving Claimant of his right to operate the Pile Driver Crane.

The material facts are not in dispute. JTD Operator Lewis operated the Pile Driver Crane on FW&D property as follows: 8 hours, December 22, 1982, loading bridge material, bridge 273, Turkey, Texas; 53 hours, December 10 through 14, 1982, loading second hand bridge material, South Plains Line; 28 hours, January 25, 26 and 27, 1983, loading second hand material, South Plains Line; a total of 89 hours.

During these periods, Claimant Thorn was under the tutelage of Operator Lewis, and Claimant was being trained to operate the Crane. Claimant was a carpenter. Claimant was not a qualified Group I Machine Operator, and Claimant held no seniority in the road equipment department as a qualified Group I Machine Operator.

There were no qualified Group I Machine Operators available, and Mr. Thorn, having shown interest in becoming a Pile Driver Operator, was being given training by Mr. Lewis. Claimant was on duty and under pay while Operator Lewis was on the property.

Machine Operator Lewis was not "placed" on FW&D property. He was transferred to another seniority district in order to perform temporary service on the other seniority district because of absence of qualified operators. The Carrier states: "For many years, the parties have permitted machine operators to cross these seniority districts to perform temporary service on the other districts because of absence of qualified operators. Borrowing of qualified operators to perform temporary service on territory not having qualified operators is subject" of concurrence with the Organization. (Carrier's Exhibits Nos. 5, 6 and 7). The Carrier further states, "in the past several years requests to borrow machine operators have been handled verbally with office of the General Chairman. Arrangements to protect employees' seniority and expenses for periods of two to three weeks have been handled by telephone. January 17 through 31, 1983, Machine Operator R. A. Ponce DeLeon was sent from Wichita Falls to Teague, Texas to train an operator on the JTD to operate Tie Unloading Machine 1414. These moves of men and equipment have been made with the General Chairman's concurrence."

In the instant case, the evidence of record has been scrutinized to determine whether the Carrier obtained the General Chairman's concurrence for the transfer of Machine Operator Lewis. Evidence showing Carrier's request of the Organization for such transfer, or evidence showing the General Chairman's concurrence is lacking. Accordingly, in view of the particular facts and circumstances shown to exist in this particular case, evidencing lack of request and concurrence by the General Chairman, the Carrier is in violation of the Agreement.

The Board finds that the claim for compensation on behalf of the particular claimant in this case, Mr. A. C. Thorn, is without merit. Claimant was not qualified for the work in question, had no seniority in the classification, and was on duty as trainee for the work in question for which he was duly compensated.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The monetary claim of Claimant A. C. Thorn is denied.

  
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JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
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C. F. FOOSE, EMPLOYE MEMBER

  
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B. J. MASON, CARRIER MEMBER

DATED: April 3 1954