

PUBLIC LAW BOARD NO. 2774

Award No. 137
Case No. 137

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated Memorandum of Agreement dated June 23, 1983, when on March 29, 1984, it refused to insert Trackman G. A. Glasby's name in its proper order on the Group 7, Class 2, 3 and 4 Seniority Roster.
2. That Claimant G. A. Glasby's name be inserted in the proper place of the Group 7, Classes 2, 3 and 4 Seniority Roster and that he receive the differential in wages between that of Trackman and what he would have earned as a Group 7, Class 2 Machine Operator beginning March 29, 1984, and continuing forward."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Prior to June 23, 1983, a category of employees designated as "Miscellaneous Machine Operators" existed to operate certain specified machines. Those Miscellaneous Machine Operators held no seniority as such, and were selected based on a number of criteria including their relative seniority in the various groups and classes listed in Rule 2(a) of the agreement. Any employee desiring to operate a miscellaneous machine had to submit a written application for such service. When such employee was selected as a Miscellaneous Machine Operator based on his relative seniority ⁱⁿ and other groups and classes and demonstration of fitness and ability among other factors, he was thereafter considered to be a member of Carrier's pool of Miscellaneous Machine Operators. When his seniority would not permit him to work as a Miscellaneous Machine Operator, he was allowed to exercise the seniority he held in the other groups mentioned in Rule 2(a) of the agreement. When working in those other groups and classes, whenever there

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was a force reduction or seniority was held, he was still considered a member of the pool of Miscellaneous Machine Operators. Such an employee could remove himself from that pool by notifying Carrier in writing that he desired to relinquish his rights to service as a Miscellaneous Machine Operator. In this dispute, the claimant herein did just exactly that on June 17, 1980.

On June 23, 1983, the parties signed a Memorandum of Agreement which provided effective September 1, 1983, for the inclusion of Miscellaneous Machine Operators in the Group 7 seniority classification. Miscellaneous Machine Operators thereby became Group 7 Machine Operators with seniority in Classes 2, 3 and/or 4. That Memorandum of Agreement provided in part:

"An employee ranking on the Group 7 seniority roster(s) for Classes 2, 3 and 4 shall be based on the individual employee's earliest seniority date on the current seniority roster in any class subject to the Maintenance of Way Agreement on the particular seniority districts involved."

The agreement continues to provide:

".... any employee in service or subject to recall who was operating a machine listed in one of the new classes or has theretofore demonstrated proper qualifications for operation of any of the machines listed in one of the new classes shall have a seniority date established in the classes of Group 7 where said machine 'S' is (are) listed as well as in the lower classes of Group 7."

The Organization cites the language of the agreement specified above in support of its position. That position in this instance is that the parties intended that the names of all employees in service are subject to recall who are operating a machine listed in one of the new classes or had previously demonstrated proper qualifications for operation of any such machine, including those who had given up their rights to service as a Miscellaneous Machine Operator, would be given a seniority date in one of the new classes of Group 7 (as well as any lower classes of Group 7).

The Carrier contrarily contends that the parties' intentions were that only the

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names of those employees who were considered to be members of the pool of Miscellaneous Machine Operators and such operators who had been promoted (rather than those who had given up their rights to service as a Miscellaneous Machine Operator) would be given a seniority date in one of the new classes of Group 7, as well as any lower classes of Group 7. In support of this position, the Carrier cites the language of the heading or first paragraph of the Memorandum of Agreement as follows:

"Memorandum of Agreement between the Atchison, Topeka and Santa Fe Railway Company and its employees represented by the Brotherhood of Maintenance of Way Employees, revising certain rules of the August 1, 1980 Maintenance of Way Agreement to include Miscellaneous Machine Operators in Group 7, effective September 1, 1983."

The Board concludes that the Carrier's position in this dispute is correct. The heading of the paragraph cited by Carrier clearly sets forth that the intent of the agreement was to include Miscellaneous Machine Operators in Group 7. Since, in this instance, claimant was not a Miscellaneous Machine Operator, having relinquished his rights to that position on June 17, 1980, he had no rights as set forth in the claim.

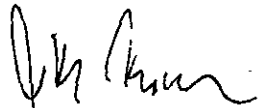
The Board also notes that while the agreement language cited by petitioner, if isolated from other provisions of the agreement, would appear to support the Organization's position in this dispute, that same language is fully compatible with Carrier's position. The language in question is applicable only to those employees who were regarded as members of the Carrier's pool of Miscellaneous Machine Operators, that is, those who were operating the machines listed, those who had previously operated such machines but were furloughed and subject to recall as a Miscellaneous Machine Operator on September 1, 1983, and those who had previously operated such machines but were working on higher rated positions or positions in other groups and classes (such as Foremen, Assistant Foremen, etc.) and had not given up their rights to operate miscellaneous machines. Further, if one applies a test of reason to this dispute, it is impossible to see any basis for treating those who have given up their Machine Operator rights in the same fashion as those who have maintained their status as members of Carrier's pool of Miscellaneous Machine Operators. If one were to treat both categories of employees equally in applying the new agreement, it would be the

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equivalent of rewarding those employees who relinquished their Machine Operator rights at the expense of those who maintained their Machine Operator rights. This would be clearly unfair to those who were maintaining such rights as of September 1, 1983. For the reasons indicated, it is apparent that the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon, Carrier Member

Chicago, Illinois

May 7, 1985



C. F. Foote, Employee Member