

PUBLIC LAW BOARD NUMBER 3530

Award Number: 50

Case Number: 50

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Alvin Meador, Rt. 2, Box 178, Hardy, VA 24101,
Roadway Machine repairman helper performing Roadway
Machine repairman's work. Employees request
difference in rate of pay between the two jobs.

FINDINGS:

The Organization filed claim on behalf of Claimant for the above cited difference in pay, on the grounds that Claimant was required to perform Roadway Machine repairman service without the assistance of a helper.

The issue to be decided in this dispute is whether Carrier violated Rule 59 of the Agreement by refusing to pay Claimant at the higher rate of pay for performing the service in question.

The Organization's position is that Rule 59 was violated by Carrier when it refused to pay Claimant at the Roadway Machine repairman rate. The Organization cites Rule 59 which

states, "An employee working on more than one class of work on any day will be allowed the rate applicable to the character of work prepondering for the day..." The Organization alleges that Claimant was required to perform Roadway Machine repairman's duty, and cites Claimant's work breakdown to substantiate its position. The Organization also cites Roster G4C1 showing Claimant as having seniority as a Roadway Machine repairman.

The Carrier's position is that it did not violate Rule 59 by paying Claimant at the Roadway Machine repairman helper's rate. Carrier maintains that Claimant was paid at the position rate for the position he was assigned to -- Roadway Machine repairman helper. Carrier additionally maintains that Claimant did not replace an employee receiving a higher rate of pay, and therefore cannot be deemed eligible under Rule 59 for the higher rate of pay. Carrier argues that without evidence establishing that Claimant performed Roadway Machine repairman duty, the Organization cannot rely on Rule 59 to support its claim. It is Carrier's position that the evidence does not indicate that Claimant performed the alleged duty, in that he did not supervise any helpers or perform other duties associated with the Roadway Machine repairman position. Carrier alleges that all helpers basically perform the type of service performed by Claimant. Carrier denies that the mere

fact that Claimant worked alone entitles him to the higher rate of pay.

After review of the record, the Board finds that the Organization's claim must be denied.

Rule 59, relied on by the Organization, only requires payment at the higher rate when an employee: (1) performs (preponderantly) the class of work meriting higher pay; (2) is temporarily assigned to a lower rated position; or (3) is required to fill the place of another employee receiving a higher rate of pay. The Organization has failed to establish Claimant's entitlement under any of the three criteria. Claimant was clearly not "temporarily assigned" to a lower rated position, since his job assignment was "Roadway Machine repairman helper," the position for which he was paid accordingly. Further, Claimant was not required to "fill the position" of an employee receiving a higher rate of pay. The Organization has not produced any evidence that Claimant replaced any Roadway Machine repairman. Finally, the Organization has failed to show that Claimant performed the preponderance of duties of a Roadway Machine repairman. The duty list offered by the Organization does not indicate that any of those duties are solely performed by Roadway Machine

repairmen. Further, the fact that Claimant worked alone does not by itself transfer his status from helper to full Repairman.

AWARD

Claim denied.

Nicholas P. Jones
Neutral Member

J. A. Abbatello Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 1-21-87