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PUBLIC LAW BOARD NO. 4104

Case No. 63

B.M.W.E.

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

1. The Carrier violated the agreement when it assigned junior Group 3 Machine Operators R.E. Kiel, R.E. Stout and S.D. Sloan to perform work on Chicago Region Gang MTG #1, on various dates prior to April 8, 1985, instead of assigning and using Group 3 Machine Operators D.W. Elston, L.H. Sutton, R.G. Ferris and J.A. Bowen, who were senior, available and qualified to perform such work (System File Reg. Gang/Gr GMWA 85-6-26).

2. Because of the aforesaid violation:

(a) Claimant D.W. Elston shall be allowed eight (8) hours' pay at the applicable pro rata rate for each day junior Group 3 Machine Operator R.E. Kiel performed work from March 25 through April 4, 1985, a total of nine (9) days.

(b) Claimant L.H. Sutton shall be allowed eight (8) hours' pay at the applicable pro rata rate for each day junior Group 3 Machine Operator R.E. Stout performed work from March 27 through April 4, 1985, a total of seven (7) days.

(c) Claimant R.G. Ferris shall be allowed eight (8) hours' pay at the applicable pro rata rate for each day junior Group 3 Machine Operator S.D. Sloan performed work from March 26 through March 29, 1985, a total of four (4) days.

(d) Claimant J.A. Bowen shall be allowed eight (8) hours' pay at the applicable pro rata rate for each day junior Group 3 Machine Operator S.D. Sloan performed work from April 1 through April 4, 1985, a total of four (4) days."

OPINION OF BOARD: Claimants held seniority as Group 3 Machine Operators within the Roadway Equipment Sub-Department and were on furlough status on the dates of this dispute. In March 1985, Carrier issued bulletins in connection with the formation of Chicago Region Gang MTG #1 scheduled to begin operations on April 8, 1985. Claimants successfully bid positions as did 3 junior

Group 3 Machine Operators. Prior to April 8, 1985, Carrier required the services of Group 3 Machine Operators to perform work loading and unloading equipment to be utilized by Gang MTG #1. Carrier called and assigned junior Machine Operators Kiel, Stout and Sloan to perform the work. This assignment was challenged by the Organization and a claim was filed on behalf of Claimants on April 21, 1985.

It is the Organization's position that Carrier's action violated Rule 2A of the Agreement since Claimants were senior to the three Machine Operators. It argues that Claimants were entitled to perform the work on the claim dates listed. Rule 2A reads:

Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided.

The Organization further asserts that the work performed by the junior Group 3 Machine Operators was work that any Group 3 Machine Operator was capable of performing. It maintains that the work performed was not restricted to a specific machine but merely helping and assisting B&B Mechanics in the preparation and maintenance of machines. In the Organization's view, Carrier violated the Agreement by calling junior employees to perform work over the seniority rights of Claimants. Accordingly, it asks that the claim be sustained.

Carrier asserts that it complied with Rule 2A of the Agreement since it had been the past practice to call back the operators in

seniority order by machine. It asserts that if a senior Group 3 Operator was called back to work on any machine, he may not have working knowledge of that specific machine. Carrier avers that the operators were called back in the same manner as has been done since region gangs were established. Carrier contends that there is no basis for the practice to be changed and asks that the claim be denied.

After a review of the entire record of this dispute, we agree with the Organization's position. Although Carrier relies on the argument of past practice, we must conclude that the work performed on the dates in dispute was that of a Machine Operator, under the plain language of the Agreement. Thus, the seniority rights of the Claimants entitle them to that work. Rule 2A is clear and unambiguous. Seniority provisions are included in collective bargaining agreements for the benefit of senior employees. They seek to protect and give preference in jobs, promotions and other opportunities to employees with greater seniority. Under these particular facts, we do not find anything that would disturb the seniority rights of Claimants entitling them to the work in dispute. Accordingly, we will sustain the claim but only at the straight time rate of pay.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

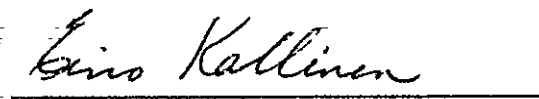
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

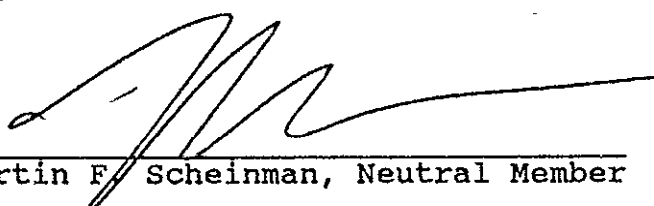
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1/2/91