

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)

) Case No. 39

)

) Award No. 33

)

Martin H. Malin, Chairman & Neutral Member

T. W. Kreke, Employee Member

J. F. Ingham, Carrier Member

Hearing Date: June 5, 2008

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier utilized and assigned Trackman E. Garcia as a crane operator at Joliet, Illinois, instead of Heavy Equipment Operator R. Thompson beginning August 13, 2005 and continuing and when it failed to bulletin said crane operator position (System File DJ-5-2005/UM8-2005).
2. As a consequence of the violation referred to in Part (1) above, Ms. R. Thompson shall now be paid 2 hours travel everyday worked to and from home at a total of 100 hours plus mileage at the present rate. Under rule 59 - Time limits on Claims and Grievances Rule 2. This claim will continue until said infraction is resolved.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Effective June 3, 2005, Carrier abolished two Heavy Equipment Operator positions at Joliet. The positions had been held by Claimant and another employee. The other employee exercised his seniority to a Super Truck position at Gary. Claimant then exercised her seniority and displaced the other employee. The other employee then exercised his seniority to a Trackman position at Joliet.

There is no dispute that on some days during the time period that is the subject of the claim, the other employee operated a crane at Joliet. The dispute centers over whether Claimant is a proper claimant to contest Carrier's actions, whether the Agreement required Carrier to

bulletin a crane operator position at Joliet, and whether the remedy sought by the Organization on Claimant's behalf is appropriate under the Agreement.


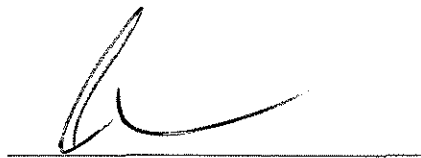
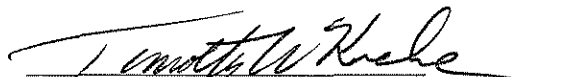
This dispute is, in effect a continuation of the claim that was before the Board in Case No. 38, Award No. 32. Award No. 32 covered the period June 4 through August 12, 2005. The instant claim is a continuing one beginning August 13, 2005.

In Award No. 32, we determined that Carrier should have bulletined the Crane Operator position at Joliet for the period June 21, 2005 through August 2, 2005. However, we denied the claim because it sought only pay for Claimant's travel time and mileage spent commuting from her home to her Super Truck position in Gary. We found no authority in the Agreement or in precedent for such a remedy.

We need not determine whether in the instant case there is any time within the claim period for which Carrier was obligated to bulletin a Crane Operator position at Joliet. The claim in the instant case suffers from the same defect as the claim in Award No. 32. It seeks the same remedy, i.e. pay for travel time and mileage for Claimant's commute from her home to Gary. We reiterate that there is no basis in the Agreement or in precedent for such a remedy and, accordingly, the claim must be denied.

AWARD

Claim denied.


Martin H. Malin, Chairman
J.F. Ingham
Carrier Member
T. W. Kreke
Employee Member
OCT 14, 2008

Dated at Chicago, Illinois, October 14, 2008.