

PARTIES TO DISPUTE: Baltimore and Ohio Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: Carrier violated the effective Agreement by not allowing Class "A" Machine Operator James M. Thompson, St. Louis Division, to displace junior operator Robert Helmes, following Operator Thompson's furlough October 15, 1971. That Carrier shall now compensate Claimant Machine Operator James Thompson for the time lost on this account between October 18 through October 29, 1971.

OPINION OF BOARD: The record shows that Claimant, who held seniority as a Class "A" Machine Operator, elected to hold his regular assignment as Extra Gang Laborer rather than exercise his seniority to bid (on two separate occasions) on machine operator positions that had been advertised by appropriate bulletin. Consequently, a junior employee was awarded the position of Electromatic Tamper Operator, one of the bulletined positions declined by Claimant. Subsequently, Claimant was assigned by his Foreman to operate a machine, no applications having been received to operate such machine. On October 15, 1971 this machine was cut off and Claimant was furloughed whereupon he promptly chose to displace the junior employee operating the Electromatic Tamper. He was denied such displacement on the grounds that he forfeited his displacement

rights to that particular machine operation by virtue of the fact that he had not elected to bid on that position when he had the opportunity to do so several months previously. There is no dispute that the Claimant was actually working as a Machine Operator at the time he was furloughed, that he held seniority to do so, and that he had been assigned to the position of operator by his supervisor account no applications having been received. The record also indicates that Claimant was not filling a temporary vacancy as operator in view of the fact that he worked as operator for several months immediately prior to the furlough date.

The record further shows that during the time Claimant was operating the machine he received the rate of pay of a Class "A" Operator. It is therefore obvious that Claimant was, at the time of furlough, actually working as a Machine Operator and not as a Trackman.

In light of the foregoing, the question before this Board is not so much one of what were Claimant's rights as a regularly assigned Extra Gang Laborer to displace a junior machine operator, but what were Claimant's rights to displacement as a qualified machine operator over an operator with less seniority under the circumstances in this particular case.

Rule 53(h) states, in pertinent part, as follows:

".....an employee assigned to position of Operator of a specific machine will, in the event his position is abolished be permitted to displace


operators of Class A or Class B machines in accordance with their relative seniority as Work Equipment Operators."


We are persuaded by the record in this case that (1) Claimant held seniority as a Class "A" Machine Operator; (2) that he was at time of furlough, and for several months prior thereto, operating a machine to which he had been assigned; and (3) that, therefore, he had the right to displace a junior operator as specified in the aforementioned Rule of the Agreement.


For the reasons stated herein we will sustain the claim for payment of actual time lost on the claim dates.

AWARD: Claim sustained.

ORDER: The Carrier shall comply with this Award within thirty (30) days of the date of this Award.


C. Robert Roadley, Neutral Member


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member

Baltimore, Md.
March 11, 1974