

**BEFORE PUBLIC LAW BOARD NO. 1837**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**NORFOLK & WESTERN RAILWAY COMPANY**

**Case No. 119**

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, and December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, and 16, 1997, the Carrier assigned Wabash front-end operator G. Shepard to perform work of operating a front-end loader at various locations on the Chicago-Michigan City District (Carrier's File MW-FTW-97-148).
2. As a consequence of the violation referred to in Part 1 above, Mr. J. L. Dawson shall be paid all straight-time and overtime hours at the bulldozer spreader operator's rate of pay for all the hours worked by Wabash employee G. Shepard.

**FINDINGS:**

Claimant J. L. Dawson has established seniority in various classes. On May 6, 1987, the Claimant established seniority as a dozer-backhoe operator in the Maintenance of Way Department on the Nickel Plate Seniority District, which includes the Chicago-Michigan City District. During the instant claim, the Claimant was regularly assigned as an arc welder with headquarters at E. Wayne, Indiana.

On December 23, 1987, the Organization filed a claim on behalf of the Claimant for payment of all straight-time and overtime hours at the bulldozer spreader operator's rate of pay for the period November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, and December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, and 16, 1997. This claim resulted when the Carrier assigned Wabash employee front-end loader G. Shepard to perform the work of operating a

front-end loader at various locations on the Chicago-Michigan City District and failed and refused to allow the Claimant to perform the work. The Organization has in its possession statements from seven Carrier employees verifying that they witnessed Mr. Shepard operating the front-end loader on the dates in question. The Organization contends that the work in question was performed on territory covered under the scope of the parties' agreement and that Mr. Shepard held no work rights to the work that was performed and failed to establish any seniority under the provisions of the parties' agreement. The Organization argues that the Claimant was qualified, available, and entitled to perform the work because of his established seniority. As a result, the Organization contends that the Carrier violated the parties' Scope Rule and agreement dated February 1, 1951, Rules 1(a), 1(b), and 3, as well as Section (2) (First) of the Railway Labor Act.

The Carrier denied the claim contending that the work Mr. Shepard performed was of a temporary nature and did not require that the position be advertised in advance. The Carrier contends that there were no other qualified and available employees having seniority on the territory in question who could have been diverted to perform the work, and Mr. Shepard was chosen for the task. The Carrier also argues that the Claimant was fully employed as an electric welder and took some sick time at the time the work was required to be performed and was, therefore, unavailable. In addition, the Carrier contends that Mr. Shepard performed work on only some of the dates claimed by the Organization and that the claim is excessive in that compensation is being sought for time in which the Claimant performed no service.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Carrier violated the

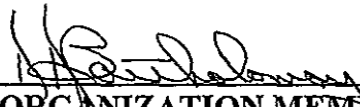
agreement when it assigned a Wabash employee who held no seniority under the controlling agreement to perform work on the Nickel Plate Seniority District. Rule 1(a) clearly states that seniority will be restricted to the seniority district on which seniority has been established. During the periods in question, the Carrier used a former Wabash railroad employee who held no seniority or work rights under the controlling agreement to perform work of operating the Carrier's front-end loader at various locations on the Chicago-Michigan City District. That was a clear violation of the rule.


Once this Board has determined that there is a violation of the rule, we next must turn our attention to the relief being sought by the Organization. In this case, the Organization seeks relief for a variety of dates, but is not entitled to all of them. A thorough review of the record makes it clear that the Claimant is only entitled to twenty-one days of compensation at the straight-time rate. For the first three days of the claim period, it did not take place there. On five days, the bulldozer was in the shop. On another day, there was a vacation being taken. Consequently, when those nine days are deducted from the thirty days in the claim, only twenty-one days of payment is to be required under the rules.

**AWARD:**

The claim is sustained in part. The Claimant shall be awarded 168 hours of pay for twenty-one of the thirty days claimed.

  
 PETER R. MEYERS  
 Neutral Member

  
 ORGANIZATION MEMBER  
 DATED: 3-10-00

  
 CARRIER MEMBER  
 DATED: 3-2-00