

PUBLIC LAW BOARD NO. 2182

Award No. 7

Case No. 8
Docket No. MW-77-107

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement

of Claim: 1. The Carrier continues to violate the Agreement when it requires machine operators to break in on machines without compensation for services rendered thereon.
2. All machine operators be allowed compensation during such break-in periods.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 22, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

This is a companion Case to the Cases involved in Award No. 2.

Carrier's Assistant General Superintendent Maintenance of Way Equipment & Scales, issued the following circular on September 6, 1977 reading:

"ALL SYSTEM ROADWAY MACHINE OPERATORS:

For the benefit of Machine Operators who have entered service within the past year, outstanding instructions concerning qualifying on machines are reissued below:

A Machine Operator who is the successful bidder on Machine Operator's position, or who displaces onto a Machine Operator's position, will be required to qualify as Operator on such machine, and will do so at no expense to the Company, as per

Article 8, Section 6 of the BofMofWE Agreement. No travel time or mileage will be allowed to the new assignment.

When necessary to qualify for a position, the Division A&WE Supervisor must be notified, and arrangements will be made for qualifying and certification. Upon receipt of certification to the Roadmaster or Supervisor in charge, Operator's time will start on date of certification.

'If there are any questions regarding the above instructions, please call this office for assistance.'"

The General Chairman presented a grievance to said Assistant Superintendent pointing out that this interpretation of Article 8, Section 6, of the Current Agreement, was totally in error. He then went on to point out that a similar notice had been posted by the former General Superintendent of Maintenance of Way Equipment & Scales in 1970 and that the General Chairman, at that time, objected on the grounds that the Carrier was incorporating the qualifying provisions of the rule, which was not part of the rule and that General Chairman's interpretation of Article 8, Section 6, was to the effect that the rule only applied to an employee moving to a new position at his own expense when exercising seniority. However, it did not mean that an employee would work without pay.

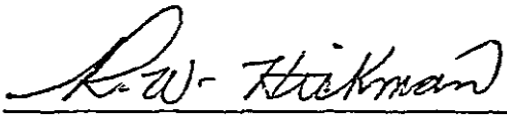
It was averred that the succeeding several General Chairmen likewise followed such interpretation of Article 8, Section 6.

Such instructions were somewhat qualified but not substantively. Notwithstanding, the Employees point out that the exchange of correspondence and discussions between the parties indicates clearly that a problem exists in compensating machine operators for service performed when exercising their seniority on a different machine.

Here, as in Award No. 2 and the Cases involved in Award 2, the positions of the parties are the same. The Board finds, as it did in Award 2, that, pursuant to the authority conferred upon it, lacking sufficient evidence upon which to properly base a conclusion as to what the intent of the parties was concerning the rules involved it is impelled to likewise dismiss this case.

Award: Claim dismissed.


M. A. Christie, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member