

PUBLIC LAW BOARD NO. 2960

AWARD NO. 119
CASE NO. 157

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it used an employe junior in seniority to Class A Machine Operators R. G. Grueb and R. L. Waltermann to fill a tamper operator's position from March 2 to April 23, 1984. (Organization File 6T-4561 and 6T-4571; Carrier File 81-84-169)
- (2) Claimant R. G. Grueb shall be compensated 176 hours at the straight time rate and 10.8 hours at the time and one-half rate for the period March 2, 1984, up to and including April 13, 1984; and Claimant R. L. Waltermann shall be compensated for all wage loss suffered from April 17, 1984 until April 23, 1984.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The record bears out that the Carrier had a gang working in the vicinity of Oral and Buffalo Gap, South Dakota. In connection with this work, the Carrier operated a Mark I tamper between March 2 and April 23, 1984. The machine worked 15 days in March and 11 days in April and never more than 4 consecutive days.

The Organization argues that under 16(A) the Carrier was obliged to bulletin the position. Thus the Claimant who had more Class A seniority than Trackman Brown could have bid on the position. The pertinent portion of Rule 16(A) states:

"(a) All new or vacant positions of a class coming within the scope of this Agreement, known to be of thirty (30) calendar or more days duration, will be bulletined for a period of ten (10) calendar days and assigned within seven (7) calendar days subsequent to termination of the bulletin.

"Positions will be bulletined in one of the four following manners:

(1) Temporary - positions established for more than 30 calendar days but less than 90 days, which are not seasonal in nature.

(2) Pending Return - positions bulletined due to the incumbent vacating the position temporarily. Bulletin will include name of incumbent, reason vacated, and expected duration. Resultant vacancies will be bulletined in the same manner.

(3) Seasonal - positions which are established to work only during the summer or the winter season. Approximate duration will be shown.

(4) Permanent - in all other cases positions will be bulletined as permanent."

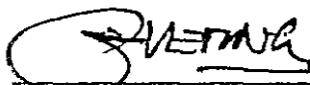
On the other hand, the Carrier takes the position that Trackman Brown was the proper employee to operate the machine since its

use was irregular and was not operated on a regular five day per week basis for thirty consecutive calendar days. In view of this, they believe Rule 16(A) controls since he was the senior person holding Class A seniority and not working as Machine Operator.

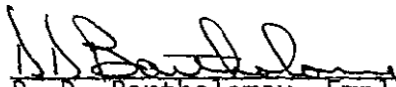
It is the opinion of the Board that under these circumstances the Carrier did not violate the Agreement. Rule 16(A) would not apply where the service requirements for a machine are truly intermittent.

AWARD

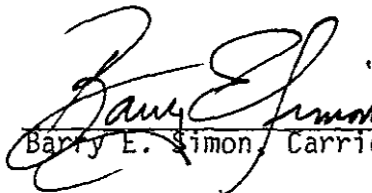
The Claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Oct 21, 1986