

PUBLIC LAW BOARD NO. 2960

AWARD NO. 125
CASE NO. 169

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 assigned and used Rail Gang Foreman C. R. Gatewood instead of Machine Operator E. L. Teastworth to fill a vacancy of the 902 Machine Operator position at Eagle Grove that was regularly assigned to Claimant Teastworth by Assignment Notice No. 397.

(2) Claimant Teastworth is entitled to the differential in the 902 position rate of pay and the rate of pay received and the differential in pay for all overtime hours rendered to C. R. Gatewood from September 21 to November 15, 1983.

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.

Certain facts are not disputed. On September 21, 1983, Claimant was awarded a 902 Machine Operator-Common position at Eagle Grove, Iowa. The responsibility of this position was to operate a 10-yard dump truck and a caterpillar

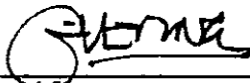
operation. He was not assigned to the position until November 15, 1983. The Organization submitted a claim seeking the differential for all hours between the position he bidd of from and the 902 machine operator position. The claim also sought overtime pay for work on unassigned days, asserting that rail gang foreman Gatewood worked this position on these days.

The record indicates that the Carrier paid the Claimant the 902 machine operator rate of pay for the time he was held on his position with the exception of September 21, October 12, 13 and 14. There is little question he is entitled to the higher rate on these dates as well and we direct that he be compensated accordingly.

The remainder of the claim relates to the weekend overtime which was worked utilizing the dump truck in question by Foreman Gatewood. The record shows that Foreman Gatewood was in charge of a weekend material gang and that the truck was used in connection with that work. In view of this fact, Rule 23 would not apply and the Claimant was not entitled to be called to operate the dump truck even if he had been released from his 903 assignment.

AWARD:

The Claimant is entitled to the higher rate of pay as set forth in the opinion, for September 21, October 12, 13 and 14.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



M. Humphrey
Carrier Member

Dated: 5/9/89