

PUBLIC LAW BOARD NO. 2960

AWARD NO. 65
CASE NO. 59

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 employees junior in seniority to Machine Operators M. D. Davis and D. E. Corwin to fill temporary vacancies as tamper operators during the period November 6, 1981 and December 10, 1981. (Organization File 4T-2833; Carrier File 81-3-247)

(2) The Claimants shall be compensated for the difference in wages between the Trackman's and Machine Operator's rate for all time worked by the junior operators during the claim period.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the 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 Claim contends that the Carrier violated Rule 16 and Claimant Davis' seniority rights as a machine operator pursuant to Rule 4 when they used a junior employee, L. R. Bachman, to operate a machine on

Surfacing Crew 702 on November 6 to December 10, 1981. They also claim under similar circumstances that Claimant Corwin's seniority rights were violated when the Carrier used a junior employee, J. J. Schulte, to operate a machine.

It is also noted as factual background that the Claimants' positions as machine operators on Surfacing Crew 702 were abolished at the close of work on November 6, 1981. The Claimants exercised their seniority to trackman's positions at the Tama Welding Plant.

Rules 4 and 16 are quoted below:

"Rule 4 - Seniority

"(a) Except as otherwise provided in this Rule, seniority of new employees begins at the time an employee's pay starts.

"When two or more employees enter the service on the same day in the same class and seniority district, their relative standing on the seniority roster will be determined by their attained ages, the oldest employee being placed first.

"An employee who voluntarily leaves the service of the Company shall, if re-employed, rank as a new employee.

"(c) Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company."

"Rule 16 - Bulletining New Positions and Vacancies

"(b) Vacancies of less than thirty (30) calendar days duration may be filled without bulletining, except that senior qualified employees in the district and group will be given preferred (sic) consideration.

"Vacancies of less than thirty (30) calendar days in machine operator positions will first be filled by employees holding seniority as Machine Operators but not working as such. If there are no such employees holding seniority as Machine Operators, consideration will then be given to Track Department employees who have on file written request with Assistant Division Manager-Engineering for such consideration, prior to assignment of others. No seniority will be established for employees filling these positions on this basis."

With respect to Corwin, it is noted that the Carrier claims, without refutation, that Schulte was assigned to gang 702 at the time Corwin's job was abolished. In view of this being accepted, the fact that Corwin suffered a reduction in wages was a result of his failure to exercise his seniority rights over Schulte at the time his position was abolished and not due to any action of the Carrier.

With respect to Davis, it is noted that the vacancy Bachman was assigned to was a vacancy of less than thirty (30) days and thus, pursuant to Rule 16(b), it need not be bulletined. Therefore, it places the burden on an employee to express an interest in the position if they desire their seniority to be given "preferred consideration." There is no evidence in this record that the Claimant expressed such interest, therefore, there is no evidence he was denied preference consideration based on his seniority rights granted under Rule 4.

AWARD:

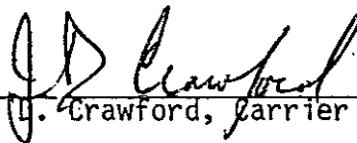
The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: Sept 6, 1984