

PUBLIC LAW BOARD NO. 2960

AWARD NO. 94
CASE NO. 125

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 Agreement was violated when Machine Operator T. J. Libertin was not called for overtime service on his assigned position on July 9 and 10, 1983. (Organization File 6T-3927; Carrier File 81-83-185).
- (2) Because of the aforesaid violation, Machine Operator T. J. Libertin shall be allowed 20 hours of pay at the applicable time and one-half rate.

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 facts are basically undisputed. The Claimant, at the time the claim arose, was assigned by bulletin to Surfacing Gang No. 6242 to work as a Machine Operator on the ballast regulator.

His gang had an assigned work week extending Monday through Friday with Saturdays and Sundays designated as rest days. On Saturday, July 9 and Sunday, July 10, 1983, the Carrier assigned Surfacing Gang 6241 and 6239 to perform normal surfacing activities. In order to perform their assignment, it was necessary to use, in addition to the ballast regulators on Gang 5241 and 6239, the ballast regulator which the Claimant regularly operated Monday through Friday each week. Instead of assigning and using the Claimant to operate the ballast regulator, the Carrier assigned and used Employees Douglas and Evans, each of which were regularly assigned to either Gang 6241 or Gang 6239. These employees performed a combined total of 20 hours overtime service on July 9 and 10, 1983.

The Union claims that the Claimant is entitled to operate the machine in question pursuant to Rule 4(c) and Rule 23(1), which read respectively as follows:

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

"Work on unassigned days - Where the work is required to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week, in all other cases by the regular employee".

It is their belief that, based on the Rules, he is entitled to the work because he was the regular employee and the work performed was not part of any assignment.

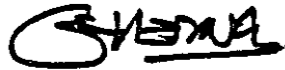
The Carrier argues, on the other hand, that when the Claimant bid on this job, he applied to work on a particular machine on a particular gang. They assert he was not simply assigned to the

machine, nor was he simply assigned to the gang. In their opinion, his assignment consisted of a combination of the two. They emphasize in the instant case, the work that was being performed on the dates of claim was in connection with the work performed by Gangs 6239 and 6241. Thus, none of the work which was being performed by the Claimant's gang was done on these dates. The Carrier also believes Rule 23(1) is controlling. However, based on their analysis of the Rule against the facts, they contend the work was performed by the "regular employees".

It is the opinion of the Board, that the claim is without support in the agreement. Rule 23(1) does not, in effect, confer ownership of a machine to its operator. The Carrier is within their prerogatives to utilize its equipment within the restrictions of the agreement. When the Carrier assigned the machine in question to the other gang, there was no obligation pursuant at Rule 23(1) which would require the Carrier to assign the Claimant to the machine. The only obligation was to assign it to the regular employee, or if not part of any assignment, to extra or unassigned employees on that gang. The Claimant cannot be considered the regular employee on either of the gangs that were employed on the day in question. It is also important to note that the employees assigned to the work, both had seniority rights as machine operators.

AWARD

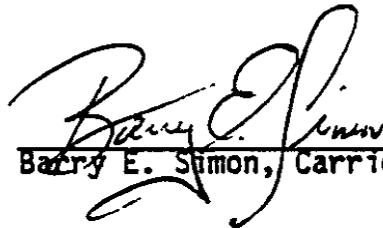
In view of the foregoing, the claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



Barry E. Simon, Carrier Member

Dated:

June 17, 1985