

PUBLIC LAW BOARD NUMBER 3530

Award Number: 49
Case Number: 49

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

C. W. Brown, et als are Machine Operators performing laborers' work. Employes request pay for each claimant at the laborer's rate of pay.

FINDINGS:

The Organization filed claim on behalf of Claimants seeking compensation on the grounds that Carrier improperly used machine operators to perform laborers' work, thus denying Claimants an opportunity to perform the services in question.

The issue to be decided in this dispute is whether Carrier violated the Agreement by using machine operators to perform laborers' work.

The position of the Organization is that Carrier violated several rules of the Agreement by using machine operators to

perform laborers' work.

The Organization first contends that Carrier violated Rule 2 of the Agreement, covering Seniority Groups, Classes and Grades. The Organization alleges that this rule classifies employee groups and duties, and prohibits Carrier from using machine operators (group three) to perform laborers' work (group one). The Organization contends that the language of Rule 2 is explicit and clearly separates employee groups and their respective work jurisdiction.

The Organization additionally cites violations of Rules 5 (Security Rights), 15 (Filling of Vacancies), and 59 (Composite Service), emanating from the Rule 2 violation. The Organization alleges that Claimants, on furlough at the time in question, were deprived of an opportunity to perform service due to Carrier's improper use of machine operators. The Organization cites signed statements from five machine operators admitting performance of laborers' duties between March 24, 1983 and April 28, 1983.

The Carrier's position is that the Organization failed to establish any rule violations resulting from its use of machine operators to perform laborers' duties.

Carrier initially argues that Rule 2 in no way prohibits

it from using machine operators to perform laborers' duties. Carrier contends that Rule 2 merely outlines the various groups and classes of employees. Carrier cites awards which it alleges establish that Rule 2 is general in nature and cannot be construed to prohibit one employee group from performing certain duties.

Carrier maintains that this claim represents an attempt by the Organization to rework Rule 2, which it can only do through collective bargaining.

Finally, Carrier denies that Rule 59 was violated. Carrier contends that the machine operators who performed laborers' work were compensated at the higher rate of pay (machine operator) for all work performed, thereby satisfying Rule 59. Carrier concludes that it has the contractual right to use employees in more than one class of service, as was done in the present case.

After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed to point to any contractual provision(s) prohibiting Carrier from using machine operators to perform laborers' work. Rule 2, relied on by the Organization, nowhere states that one employee classification

may not perform another classification's work. No restrictive language whatsoever can be found in Rule 2. Absent specific language limiting Carrier's ability to use employees as needed, we cannot conclude that such limitation exists. The awards cited by the Organization are not applicable. There is no indication that these awards pertain to Rule 2 or rules containing similar language as the Agreement in question. We are bound by the language of the Agreement before us, and that Agreement has not been demonstrated to prohibit Carrier from using machine operators to perform other duties. We agree with Carrier that Rule 59 has been complied with, since Carrier paid the machine operators in question at the higher rate of pay.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 1-21-87