

PUBLIC LAW BOARD NO. 6399

**CASE NO. 20
AWARD NO. 20**

**Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company
(former Norfolk & Western Railway Company)**

Claimant: T. Morris

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned junior employe B. Turner to operate a dump truck to dump ballast for the local smoothing gang on April 13, 2020, instead of assigning Mr. T. Morris thereto (Carrier’s File MW-BLUE-20-45-LM-342 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Morris shall now be compensated for ten (10) hours which was worked by wrongfully assigned junior employe B. Turner.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimant has established and maintains seniority in the Carrier’s Maintenance of Way and Structures Department. On the date relevant to the events herein, the Claimant was working his regular assignment as a backhoe operator.

On April 13, 2020, the Carrier needed an employe to operate a rotary dump truck to dump ballast for the local smoothing gang. There is no dispute that the Carrier did not call or offer the assignment to the Claimant, but assigned the work to B. Turner, who has established and maintains seniority within the Carrier’s Maintenance of Way and Structures Department. Employee Turner was not needed to operate his backhoe that day, so he used the rotary dump truck on straight time to assist the smoothing gang. There is no dispute that both the Claimant and employe B. Turner hold seniority

as Machine Operators and both were assigned as Backhoe Operators. There is also no dispute that the Claimant possesses superior seniority to that of junior employe B. Turner.

The Organization filed this claim on April 14, 2020, which was denied by the Carrier on June 12, 2020, and then appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that this claim involves a clear and unmistakable violation of the Claimant's seniority under the parties' Agreement. The Organization contends that there is no dispute that the Carrier failed to offer and assign the Claimant to perform the work involved herein, nor is there any dispute that junior employe B. Turner performed the work of operating a rotary dump truck to dump ballast for the local smoothing gang on the claimed date. The Organization contends that this resulted in a loss of additional work opportunity to the Claimant.

The Organization contends that the Carrier disingenuously asserts that the Intra-craft Work Jurisdiction Rule makes no mention of seniority, but this does not mean that all other seniority provisions found within the parties' controlling Agreement are null and void.

The Organization contends that the work performed by the junior employe on April 14, 2020, was in no way incidental to his regular assignment of backhoe operator. The Organization contends that this Board should reject the Carrier's assertion that because the dump truck was used to transport the junior employe's backhoe to and from work locations, the work of using his rotary dump truck to assist the smoothing gang was incidental to his work as a backhoe operator.

The Carrier contends that nothing in the applicable agreement prohibited the Carrier from assigning the operation of the rotary dump truck to employe Turner on straight time or required the Carrier to divert the Claimant from his regular assigned duties on straight time to perform the claimed work. The Carrier contends that the Organization has failed to explain how any of the enumerated rules require a different result.

The Carrier contends that the junior employe was assigned to operate the dump truck because he is regularly assigned to do so as part of his job. The Carrier contends that when Turner is not needed to operate a backhoe, he uses the truck to assist smoothing gangs by hauling and delivering ballast.

The Carrier contends that the Intra-craft Jurisdiction Rule from the 1992 National Agreement specifically grants Carriers the authority to assign any BMWED scope work to any employe covered by the applicable Agreement, provided that they are capable of performing it. The Carrier contends that the Organization has failed to identify any rule that requires the Carrier to consider seniority in assigning straight time work.

The Board has carefully reviewed the record and can find no evidence of a violation of the parties' Agreement. As the moving party, the Organization held the burden of proving a violation, but there is no cited provision in the Agreement that would prohibit the Carrier's assignment of a straight-time assignment to a junior employe.

AWARD

Claim denied.

ORDER

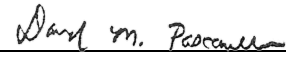
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Scott M. Goodspeed,
Carrier Member



Kathryn A. VanDagens,
Chairman



David M. Pascarella,
Employee Member

Dated: 2-23-2026