

PUBLIC LAW BOARD NO. 6399

**CASE NO. 21
AWARD NO. 21**

**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 cut off the rotary dump truck assigned to Mr. T. Morris and assigned junior employes to operate the truck beginning on April 3, 2020 and continuing, instead of assigning Mr. T. Morris thereto (Carrier’s File MW-BLUE-20-57-LM-404 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Morris shall now be compensated for fifty (50) hours, which was worked by the wrongfully assigned employes.”

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. Until his position was cut via a force reduction effective April 3, 2020, the Claimant was assigned as a rotary dump truck driver assigned to rotary Dump Truck #314608. The Claimant then exercised his seniority to another position as a Backhoe Operator.

Beginning on April 3, 2020, the Carrier assigned junior employe Machine Operator B. Turner to a full time Backhoe Operator position. As part of his job, employe Turner was required to move his backhoe to various locations, using the rotary dump truck formerly assigned to the Claimant.

There is no dispute that the Carrier never re-bulletined a rotary dump truck position. Similarly, there is no dispute that the Claimant is more senior to employe Turner.

The Organization filed this claim on May 5, 2020, which was denied by the Carrier on July 2, 2020, and thereafter 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 matter is controlled by Rules 1, 2, 3, 4, 5 and 8 of the parties' controlling Agreement.

The Organization contends that the Carrier failed to re-bulletin the abolished position operating the rotary dump truck herein, even as it continued to work it as before, daily and for at least a month and continuing. The Organization contends that there is no dispute that the Carrier failed to offer and assign the Claimant to perform the dump truck work claimed herein, and there is no dispute that the Carrier assigned a junior employe to perform the work of operating the rotary dump truck on the claimed dates. Further, the Organization contends that the Carrier's violations of the Agreement resulted in a loss of additional work opportunity to the Claimant.

The Organization contends that seniority is one of the most important cornerstones upon which collective bargaining agreements are made. In fact, arbitral boards have long recognized that seniority is a valuable property right of an employe.

The Organization contends that the Carrier was required to re-bulletin the position in order to have the position's previous work performed again and had to assign the work to the senior employe, but it did neither. Instead, the Carrier contended that it was permitted to do so because employe Turner was assigned as a backhoe operator who regularly utilizes the dump truck to move his assigned backhoe. The Organization contends that it has shown that employe Turner used the dump truck to assist smoothing gangs in providing ballast for locations where they were working, which was the Claimant's prior position before it was abolished.

The Organization contends that the Claimant should now be compensated for fifty hours which have been worked by the junior employe in the Claimant's stead.

The Carrier contends that it has not violated the parties' controlling Agreement by the abolishment of the Claimant's full time Rotary Dump Truck Operator position and re-assignment of the truck to another position for occasional use in connection with the duties of that other position.

The Carrier asserts that nothing in the applicable agreement either prohibited the Carrier from abolishing a Rotary Dump Truck Operator position that it no longer needed or required it to re-advertise a position to operate the same truck sporadically in support of another full-time position.

The Carrier contends that the Organization has failed to present any evidence that the truck had been operated in a continuous manner for more than 30 days - the threshold at which Rule 8 of the Agreement would require that a position be advertised. The Carrier contends that it presented

affirmative evidence stating that the truck had not, in fact, been operated on a continuous basis for 30 days and that it had only been operated sporadically by employee Turner.

The Board has carefully reviewed the record and confirms that the parties' Agreement does not mandate that the Carrier rebulletin a vacancy until such has been in operation for 30 continuous days. Here, the Organization has asserted that employe Turner has operated the dump truck previously assigned to the Claimant for more than 30 days, although the claim is for far less than 30 days, and the Carrier asserts that it has been in operation only sporadically.

The Board is an appellate body and, as such, has no mechanism for measuring the validity of the Organization's assertion versus the Carrier's contention regarding the number of days the dump truck was in operation. It is the well-settled principle of numerous Awards that when there is a conflict in material fact, the Board must dismiss the matter because the dispute in fact prevents the Organization from sustaining its burden of proof.

After examining the record in detail, the Board concludes that the Organization failed to meet its burden of proof to establish a violation of the Agreement.


AWARD

Claim denied.

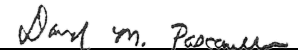
ORDER



Scott M. Goodspeed,
Carrier Member



Kathryn A. VanDagens,
Chairman



David M. Pascarella,
Employe Member

Dated: 2-23-2026