

PUBLIC LAW BOARD NO. 6920

Brotherhood of Maintenance of Way)	
Employes Division - IBT Rail)	
Conference)	
)	
and)	Case No. 26
)	Award No. 26
)	
The Kansas City Southern Railway Company)	
(Former Gateway Western Railway))	

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when, on February 8, 2016, the Carrier published an inaccurate 2016 Seniority Roster [System File 16 02 10 (006)/ K0416-6629 GAT].
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Ince shall be '*** allowed the proper designations on all applicable rosters with a corrected page inserted within the applicable roster with copies submitted to this office. Consequently, we ask that the above cited errors to be corrected immediately."

Background

On June 24, 2015, Claimant S. Ince was awarded the Machine Operator position under Gateway Division Bulletin 08-15. Claimant's position was assigned to Gang 620 and headquartered in Mexico, MO.

On February 8, 2016, the Carrier published the 2016 Seniority Roster for Gateway Division Maintenance of Way Department. The next day (February 9) Claimant filed a claim asserting that the Carrier failed to include on the roster Claimant's seniority date as Heavy Machine Operator ("HMO").

On May 2, 2016, the Carrier denied the claim stating that the 2016 Seniority Roster accurately reflected Claimant's seniority as he does not operate heavy machine equipment on Gang 620.

On June 28, 2016, the Organization filed an appeal alleging the Carrier violated Rule 12 - Seniority Datum, Rule 14 - Seniority Roster and Rule 18 - Qualifying. Claimant's awarded position as Machine Operator was advertised with the same rate of pay as a HMO position. The only classifications are HMO and Light Machine Operator ("LMO"); there is no Machine Operator classification. The Organization states that the Carrier failed to post an accurate 2016 Seniority Roster as it did not include Claimant's seniority for HMO.

On September 1, 2016, the Carrier denied the appeal. Claimant's Machine Operator position was not designated as a HMO position. Claimant occupies a LMO position. Although the rate code displayed on Bulletin 08-15 for Claimant's position is the same rate code as for a HMO position, the rate code is not indicative of designating the position as HMO. Claimant never has operated heavy machine equipment on his assignment for Gang 620.

On December 13, 2016, the parties convened in conference on the matter of Claimant's roster appeal; however, no resolution was attained. Thereafter the Organization forwarded the claim to the Board.

Findings

Public Law Board No. 6920, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

This claim is before the Board for final adjudication after having been timely and properly presented at all stages of appeal up to and including the Carrier's highest appellate officer.

When the claim was filed, the Organization alleged violations of Rules 12, 14 and 18. In its submission to the Board, the Organization identifies the controlling rules as Rules 12 and 14, not Rule 18. The Board will not consider Rule 18 since the Organization did not address it as a controlling rule. In this claim involving an alleged violation of Rules 12 and 14, the responsibility to establish the rules violations resides with the Organization.


The Organization notes that the rate code (MOP 13 at \$27.73 hourly) associated with the position (Machine Operator) awarded to Claimant under Bulletin 08-15 is the rate code for a HMO. In the Organization's view, this is *prima facie* evidence that Claimant was assigned to and operating heavy machine equipment. In other words, rate code is dispositive of the position's designation.


The evidence in this record does not support the Organization's view. For example, Bulletin 10-17 (July 27, 2017) advertised for a "Machine Operator (LMO)" with rate code MOP 13 and \$27.73 hourly pay which is the same rate code and hourly pay as Claimant's position which the Carrier states is a LMO designated position. Other evidence points to the Carrier advertising for Machine Operator positions with rate code MOP 13 and \$27.73 hourly pay and designating those positions as HMO; this is reflected in Bulletin 15-15 (October 15, 2015) and Bulletin 10-17 as well as Bulletin 10-15 (the bulletin at the core of this claim). Thus the evidence in this record shows that the rate code MOP 13 and \$27.73 hourly pay has been posted by the Carrier for HMO and LMO positions. Aside from the bulletins showing the same rate code and hourly pay for LMO and HMO positions, the Roadmaster asserts Claimant has not been assigned, and does not perform, HMO duties and Claimant does not assert that he does. The Board finds that Claimant was not awarded a HMO-designated position.

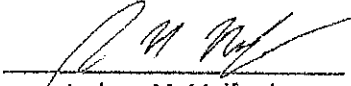
Given these findings about same rate code for HMO and LMO and Claimant not in a HMO designated position, the Board concludes there is insufficient evidence in support of the alleged violations of Rules 12 and 14. Since the Organization has not established Part 1 of the claim, the 2016 Seniority Roster stands as published. Accordingly, the claim will be denied.

Award

Claim denied.


Patrick Halter
Neutral Member


Tammy Hardge-Stephenson
Carrier Member


Andrew M. Mulford
Organization Member

Dated on this 27th day of
February, 2018