

**BEFORE
PUBLIC BOARD No. 7097**

**Award No. 7
Case No. 7**

BROTHERHOOD OF MAINTENANCE OF WAY)	)	
EMPLOYES)	)	
	)	
vs.)	)	PARTIES TO DISPUTE
	)	
UNION PACIFIC RAILROAD COMPANY)	)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned and used regularly assigned General Track Foreman D. Berning to operate a Class B machine (regulator) on the Clinton Subdivision on December 2 and 3, 2003, instead of furloughed Class B machine Operator S. Penberty (System File 4-RM-9524T/1390553 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Penberty shall now be compensated for sixteen (16) hours pay at the applicable straight time rate of pay.”

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.

Claimant holds seniority on Seniority District T-4 as a Class B Machine Operator within the Maintenance of Way and Structures Department dating from April 7, 2000. Claimant’s regularly assigned position as ballast regulator operator on Surface Gang 3414 was abolished effective at the end of his work shift on Monday, December 1, 2003. Claimant was furloughed and awaiting recall at all times relevant to this dispute.

On December 2 and 3, 2003, immediately following the abolishment of Claimant's position, the Carrier assigned General Track Foreman D. Berning, assigned to gang 3407, to operate the ballast regulator previously operated by Claimant. The Foreman worked eight hours of straight time each day to do the work.

The Organization contends that the Carrier violated Rules 16(b) and 23(1) and thereby deprived Claimant of the opportunity to do this work. The Carrier contends that it had no obligation to call the Claimant because it was entitled under Rule 77 to assign this work to the Foreman as it consisted of tasks incidental to work the Foreman's gang was assigned to perform. The Carrier also asserts that there was no violation because the Foreman's Class B Machine Operator seniority on Seniority District T-4 exceeded Claimant's.

Rule 77, "Intra-Craft Work Jurisdiction," provides that "Employees shall be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing provided the tasks are within the jurisdiction of the collective bargaining agreement." However the Rule also states, "This provision is not intended to alter the establishment and manning of work forces accomplished in accordance with existing agreement, seniority, scope and classification rules." In this case, however, the operation of the ballast regulator was not incidental to the work of the Foreman's Gang 3407 because up until the day before the Foreman performed the work (and up until Claimant's position was abolished), Claimant had performed the work as a member of Gang 3414. Therefore, the Carrier's decision to assign the work to the Foreman was not protected by Rule 77 in this case.

The Carrier contends that Claimant was not entitled to the work under Rule 16(b) because he had not made a written request for the work. However, Claimant's position had been abolished the day before; he had no opportunity to put in a written request for the work. In effect, the Carrier abolished Claimant's position two days too soon, and then assigned the work he had been doing to a Foreman, thereby depriving Claimant of sixteen hours of work. Under the particular circumstances here, the Carrier violated the Agreement, and Claimant is entitled to compensation as requested.

AWARD

Claim sustained.

Lisa S Kohn
Lisa Salkovitz Kohn
Neutral Member

W.G. P.
Carrier Member

Dated: *June 6, 2008*

Timothy Kohn
Organization Member