

REVISED COPY

SPECIAL BOARD OF ADJUSTMENT NO. 1016

Parties  
to the  
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

CONSOLIDATED RAIL CORPORATION

Case No. 24

Awd. 24

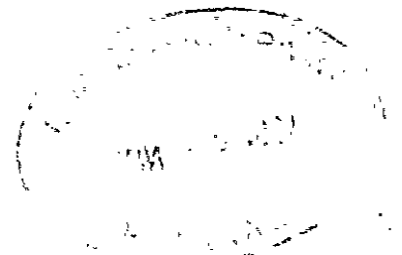
STATEMENT OF CLAIM

- (1) The Carrier violated the Agreement when it assigned Mr. C. A. Brutsman instead of Mr. K. R. Sindoni to fill a Class 1 Machine Operator vacancy (Torsion Beam Tamper) beginning January 13, 1986.
- (2) As a consequence of the aforesaid violation, Mr. K. R. Sindoni shall be allowed pay at the Class 1 Machine Operator rate for:

...8 hours each day Mr. Brutsman works this job plus all the overtime he makes working this job....

OPINION OF THE BOARD

C. A. Brutsman was assigned to a Class 2 Operator position operating a brushcutter. On occasion between January 10, 1986, and March 13, 1986, Mr. Brutsman operated a Class I machine, a Torsion Beam. Claimant K. R.



Sindoni, a furloughed Class I Operator, contended that he ought to have been recalled to operate the Torsion Beam, since Brutsman had no seniority as a Class I Operator, even though he was senior to Claimant as a Class II Operator.

Carrier argued that the Torsion Beam was not utilized on a regular basis, and certainly not enough to warrant establishment of a position and recall of an employee to fill it. It also relied on the fourth paragraph of the Scope Rule and Rule 19 to support its action in this instance. Those Rules read in pertinent part as follows:

#### SCOPE RULE

The listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement.

#### RULE 19

An employee may be temporarily assigned to different classes of work within the range of his ability. In filling the position which pays a higher rate, he shall receive such rate for the time thus employed, except, if assigned for more than four (4) hours, he shall receive the higher rate for the entire tour. If assigned to a lower rated position, he will be paid the rate of his regular position.

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This Board has reviewed the material presented in the record. We are compelled to conclude that some factual differences exist and that Petitioner has not met its burden of proof in this instance. It has not demonstrated by probative evidence that the Torsion Beam was used by Brutsman during the claim period on enough of a basis to warrant establishment of a position to operate it. The Scope Rule grants to Carrier the right to assign employees across classification lines. Based on the total record of this case, this Board is not persuaded that Carrier was required to establish a Class I Machine Operator position in this instance. The work was not performed on a continuous basis and Claimant's rights were not violated.

AWARD

The claim is denied.

  
R. E. Dennis, Chairman

  
J. H. Burton  
Carrier Member

  
S. V. Powers, Employee Member

6-3-91  
Date of Adoption