

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 108
Case No. 108

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier assigned Lead Mechanic C. T. Robertson to perform roadway machine repairman's work at the Roanoke Material Yard on May 22, 23 and 24, 2000, instead of Crane Operator E. R. Guilliams who was working in a lower rated position on the dates the violation occurred (System File MW-ROAN-00-38-SG-249).

2. As a consequence of the violation referred to in Part (1) above, Crane Operator E. R. Guilliams shall be allowed twenty-four (24) hours' pay at the roadway machine repairman's straight time rate.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and

2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.

3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

Rule 2 (Seniority Groups, Classes and Grades) provides, in

pertinent part, that:

(a) For the purpose of applying seniority, the employees covered by this Agreement shall be divided into seniority Groups, Classes and Grades as follows:

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Group 3 - Roadway Material Yard-Roanoke
Class 1:

One roster to include the following Grades:

- Grade 1 - Crane Operators (gas and diesel)
Bulldozer Operators
- Grade 2 - Crane Leaders
- Grade 3 - Utility Mechanics
- Grade 4 - Utility Helpers
- Grade 5 - Leading MW Mechanic
- Grade 6 - MW Mechanics
- Grade 7 - Leading Roadway Machine Repairmen
- Grade 8 - Roadway Machine Repairmen
- Grade 9 - Roadway Machine Repairmen Helpers

Rule 13 (Filling New Positions and Vacancies Pending Bulletining and Assignment) provides, in pertinent part, that:

(a) This Section (a) of Rule 13 does not apply to positions or vacancies of Section Foremen, Assistant Section Foremen, Assistant Yard Foremen, Laborers, but will apply to Roadway Machine Laborers as hereinafter provided.

Bulletined permanent new positions will be filled temporarily from the date work is begun until assignment is made. Bulletined permanent vacancies will be filled temporarily pending assignment. Temporary positions and vacancies will be filled pending bulletining and assignment. All of the foregoing positions and vacancies will be filled as follows: By the senior employees holding seniority in the seniority Grade and in the seniority Class and Group in which the vacancy occurs, who are not occupying positions in such seniority Grade (and who occupy positions with basic rates of pay less than those of the positions or vacancies referred to herein), and who are available for service and on the Division in which such positions or vacancies occur. The same method shall be used in filling new positions and vacancies pending bulletining and assignment which occur in Group 3. (Employees holding seniority as Roadway Machine Operators will be considered available only for particular types of roadway machines which they have qualified to operate according to Rule 11.)

A careful review of the record indicates that the Claimant (Grade 1) did not have seniority in the grade of Roadway Machine

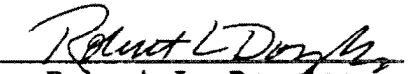
Repairman (Grade 8). The Lead Mechanic (Grade 5), who performed the disputed work in the temporary vacancy, did have seniority in the grade of Roadway Machine Repairman (Grade 8). As a result, the Lead Mechanic had a right to perform the disputed work whereas the Claimant did not have such a right within the meaning of Rule 2 and Rule 13(a).

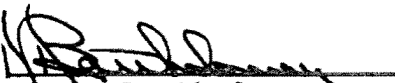
The record fails to provide persuasive evidence from members of the bargaining unit to prove the existence of a past practice in contravention of the requirements of Rule 2 and Rule 13(a). On the contrary, a careful review of the statements of the employees supports the required interpretation of Rule 2 and of Rule 13(a) under the specific circumstances set forth in the record.

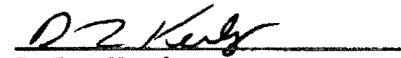
AWARD:

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board therefore finds that the Claim should be disposed of as follows:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated: 6/10/02