

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19519
Docket Number MW-19453

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Illinois Central Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned B&B Foreman L. I. Gulley, Jr. instead of Machine Operator B. B. Copeland to operate Burro Crane PR-39 on March 28, April 18, 21, 22, 23, 24, 25, 28, 29, 30 and May 1, 1969 (System File SLN-89-M-69/Case 694).

(2) Machine Operator B. B. Copeland be allowed eighty-eight (88) hours' pay at the Burro Crane operator's rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claim arises account Bridge and Building Foreman performing work allegedly accruing to employees within Group 1 of the Roadway Machine Department. Claimant is an employee within Group 1 of the Roadway Machine Department. The claim arises under Agreement between the parties, effective September 1, 1934, as amended through June 1, 1962.

FACTS

Under Rule 2 of the Agreement the Bridge and Building Department and the Roadway Machine Department are separate sub-departments; the employees in each sub-department have their seniority rights confined to their own sub-department. Under Rule 2(E) the work of operating burro cranes accrues to employees within Group 1 of the Roadway Machine Department.

On the claim dates the Carrier caused a burro crane to be operated by a Bridge and Building Foreman, who held no seniority within the Roadway Machine Department. At the time the claimant was under pay at a higher rate than the burro crane operator's rate.

Under date of September 10, 1969, the General Chairman wrote as follows to the Engineer Maintenance of Way:

"Appeal is made to you for your consideration in our claim SLN-89-M-69 declined by Division Engineer, Mr. Lager, July 23, 1969, in favor of Group 1 Machine Operator B. B. Copeland for rail crane operator's rate in addition to his regular earnings on March 28, April 18, 21, 22, 23, 24, 25, 28, 29, 30 and May 1, of 1969.

"The claimant is employed in the Group 1 classification and the man that operated this machine is not employed in the Group 1 classification. The claimant was ready and willing to perform this service on overtime and he did have a loss in earnings by not being allowed to perform this work in accordance with his seniority. It is requested that this claim be allowed."

In a April 23, 1970 letter Carrier's Manager of Labor Relations stated that: "You have not cited any provision in the Agreement which reserves the operation of burro cranes to Group 1 machine operators."

CONTENTIONS OF PARTIES

Petitioner contends the Agreement was violated when the Bridge and Building Foreman performed work accruing to a Group 1 employee and that claimant suffered loss of work-opportunity which entitled him to receive the amount he would have received if he had performed the work.

Carrier contends the Organization failed to cite any rule as being violated and that the work could not be assigned to overtime because the work was needed in rebuilding a bridge. Carrier also asserts there is no basis for a monetary award because claimant was under pay during claim period.

RESOLUTION

Virtually these same issues were dealt with in Award 18808 (Devine), which involved the same agreement and these same parties. In that Award the Carrier made essentially the same contentions that are made here, namely, that the claim should be denied because of the lack of citation of a specific rule as being violated and because of the impossibility of scheduling the disputed work to be performed by employees to whom it accrued.

In rejecting these contentions in Award 18808, the Board stated:

"The General Chairman was specific in stating the reason for the claim and the specific amount claimed. The Carrier could not have been misled.

There is no showing that the work was of an emergency nature or that it could not have been scheduled in a manner that it could be performed by Agreement-covered employees. See Awards 12671, 13832, 14061, 14621, and 15497. The claim will be sustained."

We find no reason herein to depart from Award 18808 and we shall sustain the claim.

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FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.