

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13036
Docket No. 12970
96-2-94-2-123

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 2-4-1, and 5-E-1, and the Local Overtime Agreement for the Juniata Locomotive Shop dated November 4, 1975.
2. Accordingly, the claimant is entitled to the payment as requested. Additional three (3) hours pay at the overtime rate for the day of December 8, 1992."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim of the Organization is that Carrier utilized another employee, Mr. Robertson, rather than the Claimant, R. Young, to work overtime and operate the Vacublast. The Organization argues that the Claimant was the incumbent of the position with the assigned job of operating the Vacublast. As the Claimant was available and this work belonged to him, the Carrier violated the Agreement in failing to ask him to work the overtime.

The Carrier argues that while the Claimant's position does include the use of the Vacublast, it does not stipulate the work herein disputed. It is the Carrier's position that the Claimant is assigned work on power assemblies and not air compressors. As this work involved air compressors, no violation occurred.

This Board reviewed the job description, Rules and probative evidence. The Claimant's job description reads as follows: "Repairs to all types of power assemblies, including vacublast." By letter dated May 5, 1993, the Carrier made several important assertions. First, that no service was performed on power assemblies. Second, that the Vacublast was regularly used by the air compressor gang. Lastly, that since the Vacublast used by the air compressor gang was not as effective as the one operated by the Claimant, the Carrier assigned the Claimant's machine for the cleaning of air compressors. These assertions went unrebutted and are viewed by this Board as factual.

Accordingly, there is no support for this claim. The work disputed has not been shown to belong to the Claimant. It is not relevant to this instant case where the work was performed. The Organization has not pointed to any Rule that restricts the Carrier from assigning the Vacublast to any other gang in the performance of their respective duties. There is no probative evidence or Agreement language that restricts the use of this machine to the exclusion of others. The Vacublast is a tool, not exclusively assigned to the Claimant. The claim must therefore be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.