

Award No. 11701

Docket No. MW-10924

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the 'Agreement between the Nashville, Chattanooga & St. Louis Railway and its Maintenance of Way Employees represented by the Brotherhood of Maintenance of Way Employees which became effective September 1, 1949 when it assigned an individual holding no seniority rights thereunder to operate a motor patrol grader at Hills Park Yard, Atlanta, Georgia between September 30 and November 14, 1957 inclusive.

(2) Mr. R. A. Swafford, with seniority as motor patrol operator on the NC&STL District from August 11, 1952, be allowed eight hours' pay at motor patrol operator's rate for each day of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On October 7, 1957, a Motor Patrol Grader was transferred from the Louisville and Nashville Railroad property to what is now called the NC&StL District and which formerly was the Nashville, Chattanooga & St. Louis Railway. Although the former NC&StL Railway has merged with the L&W Railroad, separate agreements continue to respectively control on the territories formerly comprising the two separate railroads.

Instead of assigning an employe holding seniority under the controlling NC&StL Agreement to operate this Motor Patrol Grader, the Carrier assigned an employe holding no seniority thereunder to operate the Motor Patrol Grader until November 14, 1957. The employe so used is an employe from the Cumberland Valley Division of the L&W RR. The Claimant is the senior Motor Patrol operator in the Construction Sub-department of the N.C.&St.L RR District. Consequently, the instant claim was filed. The Carrier offered a limited settlement of the claim in letters reading as follows:

All matters referred to herein have been presented in substance, by the carrier to representatives of the employes, either in conference or correspondence.

OPINION OF BOARD: This claim arises out of Carrier's action in transferring, along with a motor patrol (grader) from its CV District, a CV District employe to operate the equipment on the Nashville, Chattanooga & St. Louis District during the period from October 7, 1957 to November 15, 1957. Carrier acknowledges that it violated the Agreement when it failed to use as motor patrol operator, a Nashville, Chattanooga & St. Louis employe.

Claimant contends that he is entitled to reparations resulting from the violation of the Agreement. Carrier, on the other hand, maintains that Claimant suffered no loss because he was employed. Carrier also points out that the compensation requested by Petitioner is in the nature of a penalty and that the Agreement makes no provision for a penalty payment in the event of a violation of the Agreement.

We are of the opinion that the fundamental factor in this dispute is the violation of the Agreement. For Carrier to concede the breach and then to assert that Claimant is not entitled to reparations is virtually to ignore its responsibility as a party to the Agreement. For an Agreement to be effective, both parties must uphold the terms. It is not enough to recognize the breach without expecting the violator to accept the consequences for its act. We, therefore, cannot sustain Carrier's position that Claimant must show that he "was in some manner adversely affected by the action of the Carrier" for this factor is irrelevant and distracts attention from the real issue of the admitted violation of the Agreement. The argument that compensation to Claimant would be in the nature of a penalty is likewise extraneous, for it brushes aside the sanctity of the Agreement. Claimant's behavior or employment income are not the conditions that caused the breach. We regard the claim as one for damages rather than a claim for a penalty. Accordingly, we hold that Mr. Swafford is entitled to full indemnification for his claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement of the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of August 1963.