

Award No. 15538
Docket No. MW-14954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the Agreement on December 22 and 23, 1962, when, instead of calling and using Truck Driver R. C. Bouchie to perform truck driving work on said rest days, it assigned B&B Mechanic N. C. MacIntyre to perform that rest day work.
(Carrier's File MofW 148-223.)

(2) Truck Driver R. C. Bouchie be allowed eleven (11) hours' pay at his time and one-half rate to make him whole for the monetary loss suffered as a result of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority rights as a truck driver on the Sacramento Division as of April 18, 1955. He is regularly assigned to perform the work of operating Truck SA-185 Monday through Friday of each week under the supervision of B&B Foreman Noble Robinson.

On Saturday, December 22, and Sunday, December 23, 1962, B&B Foreman Noble Robinson and other members of B&B Gang No. 11 moved all office equipment, etc., of the maintenance of way clerical force and officials to the main lobby floor of the Southern Pacific Passenger Depot. These employees were notified during the work week that it would be necessary to perform this rest day work.

Truck SA-185 was used in connection with this work. The Carrier assigned B&B Mechanic N. E. MacIntyre, who holds no seniority rights as a truck driver, to operate the truck. For this work, Mr. McIntyre received 11 hours' pay at his time and one-half rate.

The claimant was available, fully qualified and willing to perform the subject work and would have done so had the Carrier assigned him to it.

Carpenter MacIntyre. Truck SA-185 was used to transport furniture and equipment between the two lumber stackers solely because its design was better adapted to this particular operation.

7. Since the Carrier did not call a truck driver to perform the described service, a claim in behalf of Truck Driver R. C. Bouchie (hereinafter referred to as the claimant), regularly assigned as truck driver, 7:00 A. M. to 12 Noon, 12:30 P. M. to 3:30 P. M., Monday through Friday, rest days Saturday and Sunday, was submitted by Petitioner's Local Chairman by letter dated February 8, 1963 (Carrier's Exhibit A), to Carrier's Division Superintendent, who denied said claim by letter dated March 20, 1963 (Carrier's Exhibit B). Petitioner's General Chairman, by his letter dated April 24, 1963 (Carrier's Exhibit C), appealed the instant claim to Carrier's Assistant Manager of Personnel, the highest ranking officer designated by the Carrier to hear such appeals. The claim was declined by the Carrier's Assistant Manager of Personnel in conference on June 5, 1963, and by a letter dated June 28, 1963 (Carrier's Exhibit D), the denial of the claim was confirmed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, as a regularly assigned Truck Driver, operates Truck SA-185 Monday through Friday of each week, Saturday and Sunday being rest days. On a given Saturday and Sunday members of B&B Gang No. 11 were required to move furniture and equipment. During the process, Truck SA-185 was used and driven by a Carpenter in B&B Gang No. 11, whose duties also include driving a truck. The Carpenter was a regular member of this work force, B&B Gang No. 11, while Claimant was not such a regular member.

Claimant contends that even though he was on his rest days, he should have been called to drive Truck SA-185 instead of the Carpenter. Petitioner, on behalf of the Claimant, relies on Rules 1, 2, 4 and 33 (k) of the Agreement.

Rule 1 is the Scope Rule, which simply lists categories of employees covered and does not describe or define work to be performed. In order for us to sustain the Claim on the basis of this Rule, Petitioner would have to show conclusively that the Claimant had the exclusive right to drive the truck in question. The Scope Rule is general in nature and does not reserve exclusively the driving of a specific truck by a specific truck driver. There is no indication in the record that the work performed was exclusively within the purview of the Claimant in accordance with tradition, historical practice and custom. (See Awards — Re Scope Rule — 12929 — 12927 — 12694 — 10389 — 11129.)

Claimant, not having had exclusive right to the work performed, the question of seniority as between Claimant and the Carpenter is inappropriate. Consequently there was no violation of Rules 2 and 4.

Petitioner also relies on Rule 33 (k), which is herein quoted:

“(k) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.”

Even though Claimant during his normal work week, does perform some driving for B&B Gang No. 11, he is not member of that gang and cannot therefore be considered the "regularly assigned employee" as encompassed in Rule 33 (k). Awards cited by the Petitioner 13824 (Dorsey) and 14029 (Hamilton) are distinguishable from the instant case in that both dealt with a "regularly assigned employee."

Since Petitioner has failed to prove an essential element of its case insofar as Rule 33 (k) is concerned, we must for this and for other reasons enumerated herein, deny the Claim. See Award 9987 (Weston inter alia).

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 Employees 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1967.