Award No. 16812
Docket No. MW-17484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it used Track Laborer V. Auilar, who holds no seniority rights as a truck driver, to drive Truck No. 104 on March 23, 24, 25, 28, 30, 31, April 5, 6 and 7, 1966. (System Case No. SG-4-66 — WM-4-66.)

(2) The Carrier again violated the Agreement when, on May 11, 12 and 13, 1966, it used Track Laborer E. R. Krumrie, who holds no seniority as a truck driver, to drive Truck No. 138. (System Case No. SG-5-66 — WM-6-66.)

(3) The Carrier further violated the Agreement when on August 8, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 26, 29, 30, 31, September 1 and 2, 1966, it used Track Laborer S. Turner, who holds no seniority as a truck driver, to drive Truck No. 149. (System Case No. SG-8-66 — WM-10-66.)

(4) Mr. D. Ard be allowed seventy-two (72) hours' pay at the truck driver's time and one-half rate because of the violation referred to in Part (1) of this claim.

(5) Mr. A. Ware be allowed twenty-four (24) hours' pay at the truck driver's time and one-half rate because of the violation referred to in Part (2) of this claim.

(6) Mr. A. Ware be allowed one hundred and thirty-six (136) hours' pay at the truck driver's time and one-half rate because of the violation referred to in Part (3) of this claim.

EMPLOYES' STATEMENT OF FACTS: On March 23, 24, 25, 28, 30, 31, April 5, 6, and 7, 1966, the Carrier assigned Track Laborer V. Aguilar, Account No. 59534, to drive Truck No. 104, hauling track materials from Kirk Yard, Gary, Indiana to South Chicago, Illinois and delivering it and other

"RULE 4.

Seniority rights of all employes are confined to the sub-department and group in which employed, except as otherwise provided herein.

The sub-departments are as follows:

1. Bridge and Building.
2. Track
3. Scales and Work Equipment.

"RULE 5.

* * * * *

(b) Employes in the Scales and Work Equipment sub-department shall have seniority rights in their respective groups on either Joliet or Gary seniority rosters but not both. Employes holding seniority as Assistant Scale Supervisor shall be listed on one seniority roster for the entire system. Effective with the date of this agreement, employes who have seniority as Motor Car Repairmen on a Joliet Division roster will retain same seniority dates and will be listed on a Joliet seniority roster for Group 2, Scales & Work Equipment sub-department, and employes who have seniority as Motor Car Repairmen on a Gary Division roster will retain same seniority dates and will be listed on a Gary seniority roster for Group 2, Scales and Work Equipment sub-department, and will also acquire seniority as Garage Servicemen in Group 2, Scales and Work Equipment sub-department, as of same date as their seniority as Motor Car Repairman. Employes working as mechanical helpers in Motor Car Shop at Joliet on the effective date of this agreement will acquire a seniority date as Garage Service Men on Joliet roster as of date of their seniority as mechanical helpers in Bridge and Building sub-department and will also retain seniority rights in Bridge and Building sub-department. All Scales and Work Equipment sub-department employes hereafter hired or taken from other sub-departments will acquire seniority on Joliet seniority roster in their appropriate group if hired or so put to work at Joliet, Illinois, or on the Gary seniority roster, if hired or so put to work at Gary, Indiana. Scales and Work Equipment employes will not be hired at points other than Joliet, Illinois, or Gary, Indiana, and such employes on either the Joliet or Gary seniority rosters may be worked at any point on the company's entire system without penalty.

* * * * *"

In the case covered by Parts (3) and (6) of the Organization's Statement of Claim, the Organization relied on the same rules as are cited above.

(Exhibits not reproduced.)

OPINION OF BOARD: Parts one (1) and four (4) of the statement of claim constitute one claim which we shall refer to as claim one (1). Parts two (2) and five (5) and parts three (3) and six (6) constitute separate claims

which we shall refer to as claims Two (2) and three (3) respectively. It is agreed that the question of overlapping shifts is in issue as to claims two (2) and three (3).

Having examined the evidence in this matter, it is the opinion of this Board that Claimant Ware was working an overlapping shift during the time of the alleged violation and was unavailable for the work claimed. Parts 2 and 5 plus parts 6 and 3 are denied. (Claims 2 and 3.)

As to Claim 1, the Organization has claimed that the question of the availability of Mr. Ard because of overlapping shifts was not raised on the property by the Carrier and consequently not before us for consideration. It is true that the Carrier never used the words "shift overlap" in denying the claim of Mr. Ard. However, in the penultimate paragraph on page two (2) of Mr. Raigel's letter of June 16, 1966 to General Chairman D. L. Woods denying Mr. Ard's claim we find the following language: "Mr. Ard was not available because he was assigned as a garage serviceman on the 3:30 to 12:00 P. M. shift and as such was not available for work on the day shift." We believe this language is sufficient to put the question of a shift overlap into issue.

The Organization has failed in its proof that Mr. Ard was an available employe within the terms of the agreement and applicable memorandum. Parts 1 and 4 are denied.

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 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 Agreement was not violated by the Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November 1968.

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