

Award No. 18876

Docket No. MW-19144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned a B&B carpenter instead of furloughed Truck Driver Guide to perform truck driving work at Grand Junction, Colorado on November 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1969 (System File D-9-10/MW-3-70).

(2) Truck Driver Guide be allowed eight (8) hours' pay at the truck driver's rate for each of the aforementioned dates and for each subsequent day that the violation referred to within Part (1) of this claim exists.

(3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

EMPLOYEES' STATEMENT OF FACTS: On February 20, 1969, the Carrier issued Bulletin No. 1 wherein it advertised three (3) positions on B&B Gang 6361, one of which was a position of truck driver. Claimant Guide was the successful applicant for the position of truck driver and was assigned thereto by a bulletin dated March 3, 1969. Copies of the aforesaid bulletins are attached hereto as Employees' Exhibits "A" and "B."

Positions of truck driver within the Maintenance of Way and Structures Department constitute a separate work classification although employees assigned thereto do not establish a separate truck driver's seniority date as such. In this connection we invite attention to Supplement "3" which reads:

"RECITALS

(A) Effective February 1, 1941, the parties hereto entered into a working agreement which, with changes therein, is in effect at the present time and may be hereinafter referred to as the General Agreement.

(B) The last three paragraphs of Rule 35 in the General Agreement specifies rates of pay for the driver of company owned truck

CARRIER'S STATEMENT OF FACTS: On November 1, 1969, the B&B Gang at Grand Junction was composed of a foreman and three B&B Carpenters.

The seniority dates of these four men as foreman, carpenter and helper are shown below:

	Foreman	Carpenter	Helper
R. S. Dillon, Foreman	3/20/37	7/1/28	4/19/27
A. C. Blackshear, Carpenter		8/18/52	8/12/52
E. C. Williams, Carpenter		5/1/58	6/11/41
D. J. Smith, Carpenter		4/24/67	3/13/67

Effective at close of work on November 20, 1969, Mr. D. J. Smith was displaced as a carpenter by Mr. R. B. Maxfield who held a seniority date of March 1, 1953 as a carpenter and a seniority date of March 1, 1943 as a helper.

The Claimant, Mr. H. L. Guide has a seniority date of February 26, 1963, as a B&B Helper but does not hold any seniority as a carpenter.

There were no positions of either truck driver or helper assigned to this B&B Gang during the period covered by this claim.

Neither Mr. H. L. Guide nor Mr. D. J. Smith are protected employees under the February 7, 1965 Agreement.

The truck assigned to this gang was driven by carpenters and/or the foreman when it was in use as an incidental part of their work.

Carrier desires to call your attention to the Statement of Claim submitted to your Honorable Board by the Organization. This Statement of Claim was never presented to the Carrier on the property.

OPINION OF BOARD: The position of truck driver on B&B Gang 6361 was abolished on October 21, 1969. Beginning on November 10, 1969 Carrier required the services of a truck on Gang 6361 and utilized Carpenter Smith to drive it. Carpenter Smith had seniority as a B&B helper but was not exercising it at the time. In any event claimant is senior to carpenter Smith on the B&B helper seniority roster.

This claim was processed by the Claimant on the property as an alleged violation of Supplement 3, paragraph 9 which reads as follows:

"(9) There will be no separate seniority dates for truck drivers as such. Seniority rights of a Track Department Truck Driver will be governed by his seniority date as a track laborer and seniority rights of a B&B Department Truck Driver will be governed by his seniority dates as a B&B helper, subject to provisions of (7) above."

The question before this Board is whether Supplement 3 had the effect of reserving all truck driving work to positions of truck drivers. Can Supplement 3 be fairly interpreted to read that the assignment of a truck to a B&B gang ipso facto creates the position of truck driver?

To hold as the Organization asks us would be to hold that the Supplement 3 is a work reservation rule rather than a job classification rule. In

the recitals set out at the beginning of the Agreement paragraph C sets out the reason for the Agreement.

"(C) This agreement is being made for the purpose of defining some of the duties and working conditions for truck driver positions referred to in (B) above."

Supplement 3 was entered into for the purpose of defining some of the duties and working conditions of truck driver positions. This cannot reasonably be equated with exclusively reserving the work described.

We have repeatedly held that classifications of work are not exclusive grants of work to that classification.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.