

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22761
Docket Number MU-22823

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when, on January 24, 1978, it used **Foreman T. Gray** to operate the truck assigned by **bulletin** to Truck Operator C. Bailey **[System File TRRA 1978-7/013-293-167]**.

(2) Truck Operator **C. Bailey** be allowed three (3) hours of pay at the truck operator's rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On January 24, 1978, it became necessary to move Truck No. 265 to the Brooklyn, Illinois shop for repairs to the air compressor. Carrier assigned Foreman **T. Gray** to drive **the** vehicle.

The Organization claims that Carrier violated the Agreement, specifically **Rule 1** Scope, **Rule 2** Classification, and Rule 3 Seniority when it failed to assign the task to Claimant, Truck Operator Charles Bailey. The **Organization** contends that since Truck No. 265 was assigned to District Gang **No. 2**, and Claimant, the Truck operator for the gang, was available, and there was no emergency, the work was properly **Claimant's**. It asks that Claimant be allowed three (3) hours of pay at the truck operator's **rate**.

Carrier denies that it has violated the Agreement. Carrier contends that there is nothing in the rules guaranteeing Claimant the exclusive right to operate the vehicle. It argues that under the terms of the Agreement, as well as past practice, **Foremen may be** assigned to operate Carrier owned or leased trucks.

A thorough reading of provisions cited by the Organization **indicates** that there is no specific language which gives Truck operators the exclusive right to operate the Carrier's trucks.

There is nothing in the Agreement which reserves this work to the Truck Operator class. It is safe to assume that if the parties intended the work of operating motor trucks to be performed exclusively by a certain class of **employees**, they would have stated **so**. Instead, it appears, under the **terms** of the Agreement, that this assignment could have been made to either Claimant or to a Track Foreman. (Track Foremen are covered by the same Controlling Agreement).

Carrier argued that the Foremen had traditionally operated the **trucks**. That is, it claimed that there is a past practice that Foremen operate the vehicles. Carrier was obligated to support this contention. It did not. Carrier failed to introduce evidence to substantiate its assertion. Therefore, we must conclude that "the practice" was not established.

Despite Carrier's failure to **prove** that Foremen had traditionally operated trucks, it **remains** incumbent upon the Organization to introduce evidence to support its assertion that the disputed work belonged to Claimant since, as already noted, the Agreement does **not guarantee** the **assignment** to Claimant. What this Board said in Third Division Award **20425** is equally applicable here:

"It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between **employees** of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner (Awards 13083 and **13198**)."

We **must** conclude that the Organization has not met its burden here. Thus, we must dismiss the grievance in its entirety.

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.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.