

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24304  
Docket Number CL-24536

Robert Silagi, Referee

**PARTIES TO DISPUTE:** { **Brotherhood of Railway, Airline and Steamship Clerks,**  
                                  { **Freight Handlers, Express and Station Employees**  
                                  { **(Maine Central Railroad Company - Portland Terminal Company)**

**STATEMENT OF CLAIM:** **Claim** of the **System Committee of the Brotherhood (GL-9584)**  
that :

(1) **Carrier violated the Agreement** between the parties **when on January 18, 1980, it assigned Scope Rule work and duties to an employee outside the Scope of the BRAC Rules Agreement and caused the transfer of Stores Material from Waterville Stores Department, Waterville, Maine to Rigby, Maine on said date.**

(2) Carrier shall now be **required to compensate Laborer Douglas A. Dufour, Stores Department, Rigby, Maine, eight (8) hours. rate \$66.25 per day, 8:00a.m., to 4:00 p.m., January 18, 1980, account non-scope employee performed Stores Department work and duties.**

**OPINION OF BOARD:**     There is no disagreement as to the salient facts. **On Thursday, January 17, 1982, upon arrival at Rigby, a loaded box car was discovered to have a defective coupler which needed replacement. A new coupler, weighing about 200 pounds, was located in Bangor and transferred to Waterville by the Waterville Car Shop truck, a distance of 57 miles. Neither the Rigby Stores truck nor the Waterville Stores truck was available, therefore the Rigby Car Shop truck, with its operator, travelled to Waterville, picked up the yoke and returned to Rigby, a total distance of 76 miles. The coupler was installed and the car forwarded on Saturday, January 19th.**

**Claimant, the senior available laborer in Rigby, alleges** that he is the one qualified to perform the work pursuant to the Rules listed below. **He** claims that he was improperly deprived of this **assignment** when **it** was given to **a car shop employee. Claimant therefore wants one day's pay. Carrier denied the claim.**

**Rule 1(3) - Scope-Employees Affected:** lists the classifications of **employees covered.**

**Rule 3(b) - Seniority Districts:** specifies that within the confines of each seniority district, each **employee** has prior rights to **assignment** and work.

**Rule 16(e) - Day's Work and Overtime:** states **that when** work is to be performed on a day which is not part of an **assignment** it **may** be performed by an available "extra or **unassigned** employee who will otherwise not have forty hours of work that week".

Although **Claimant** was available to perform the work **in** question, the Stores Department truck was not. Nor was there any **definite** date as to its next availability. Rather than detain a loaded box car for an indefinite delay, thus inconveniencing the consignee, the Carrier chose to **obtain** the replacement part by another means.

In the instant case the department which used the **material** picked up the material. There was no attempt to deprive the Stores **Department in Rigby** of work. Indeed, had the job been assigned to Claimant he would not have had a vehicle with which to **make** the delivery. In a similar situation (**Third Division Award No. 22894**) the **Board** had this to say:

"It is equally **• ppareat** **that employees** of other departments, ... also drive trucks to pick up from a supply point **material and equipment that is needed at the time by the particular using department.** They transport such **needed material and equipment to the location where it is then used.** A continuance of **this type of performance by the using departments** in the course of ongoing repairs dws not **constitute r-al of work from the application of the Clerks' Rules Agreement.**

The claim in this instance **must** be and is, therefore, 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 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 denied.

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Page 3

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By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.