

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25301
Docket Number N-25233

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Consolidated Rail **Corporation** (former
(Lehigh Valley Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Crane Operator L. Breiner instead of Backhoe Operator D. Klucsarits to perform overtime **service** as a backhoe operator at Allentown Yard on November 27, 1980 (System Docket LV-214).

(2) As a consequence of the aforesaid violation, Backhoe Operator D. Klucsarits shall be allowed six (6) hours of pay at this time and one-half rate.

OPINION OF BOARD: On November 27, 1980, a derailment occurred in the hump area of the Carrier's Allentown Consolidated Yard which resulted in a substantial amount of coal being spilled in the area of the Car Retarders. The Assistant Supervisor-Track was immediately notified of the derailment after which he determined that the American Crane was to be used to clean up the coal from the area. On or about 5:15 PM Mr. L. Breiner, the regularly assigned Crane Operator was contacted and instructed to report to work. After getting the Crane Mr. Breiner requested permission from the Yardmaster to use the track to go to the hump to clean up the coal. He was informed by the **Yardmaster** that the track **was** blocked. At that time the Assistant Supervisor-Track then instructed Mr. Breiner to get the backhoe and proceed to the hump with this piece of equipment to clean up the coal spill.

On December 3, 1980, the instant claim was filed by Mr. D. Klucsarits for six hours overtime because "**(o)n** November 19, 1980 (he) was awarded the backhoe job at Bethlehem Engine Terminal", and that he, and not Mr. Breiner, should have been permitted to operate the backhoe on overtime on the day in question. The Claim **was** denied on property on the grounds that an emergency situation existed and that it was impractical to send the Crane Operator home after it was discovered that he could not use that equipment because the track was blocked.

As moving party in the instant claim the burden of proof for sustaining such lies with the Organization (Second Division Awards 5526, 6054). Nowhere is it disputed in the record that an emergency existed which, in the **words** of the Carrier's Director of Labor Relations, "**tied** up the entire hump operation at Allentown Consolidated **Yard**" on the evening of November 27, 1980. Furthermore, nowhere is it denied that Mr. Breiner was qualified, under the contract, to operate the backhoe when it was discovered that the track was blocked and the Crane could not be used. Given these circumstances there is nothing in the record to suggest that the Carrier did not use its best judgment at the time when this incident occurred, nor that it violated any provisions of the current Agreement. On merits this Claim cannot be sustained.

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

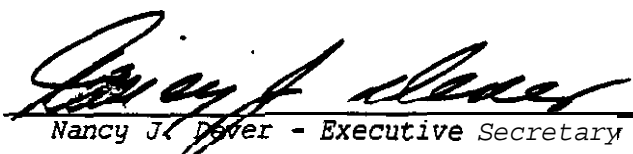
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.