

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25531
Docket Number MU-25369

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of way **Employes**
(**The** Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior Machine Operator L. Ribble to perform overtime service on April 17, 1982 instead of calling and using Machine Operator H. A. Napper who was senior, available and willing to perform that service (System File C-TC-1396/W-3563/.

(2) Machine Operator H. A. Napper shall be allowed eleven and one-half (11-1/2) hours of pay at the Class A Machine Operator's time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: On April 17, 1982, the Carrier moved a machine, BCD-II, from Columbus, Ohio to Pemberville, Ohio. The Organization claims that Machine Operator H. A. Napper should have been called on his rest day to perform this work, because he is senior to L. Ribble, the Machine Operator who was called by the Carrier. The Organization asks for payment to Mr. Napper of eleven and a half hours at his overtime rate. The Carrier contends that Mr. Ribble was not called to perform as a Machine Operator, but as a truck driver because he had a valid drivers license and Mr. Napper did not. Machine Operator Miller, whom the Carrier says it assigned to operate the BCD-II machine, permitted Mr. Ribble at his own request to operate the machine so he could become familiar with it. The Carrier maintains that Mr. Ribble operated the machine for three and one-half hours during the trip.

The Board finds that the Organization has failed to meet the burden of proof required to show that the Carrier violated the Agreement. There is no proof which may properly be considered to show that the work allegedly performed consumed eleven and one-half hours as claimed by the Organization. The Carrier states that Mr. Ribble operated the machine for only three and one-half hours. The only evidence submitted by the Organization which might have established the Organization's position cannot be considered. This was a handwritten statement from Mr. Ribble, dated June 28, 1982, and attached to a letter from the Organization to the Carrier dated July 8, 1983. Mr. Ribble stated that he had "operated BCD-II from Columbus to Pemberville earning 11 1/2 hrs. A-operator pay." The submission of the statement to the Carrier thirteen months after the filing of the initial claim, seven months after the conference on the property on December 16, 1982, and only three weeks before the Organization invoked the services of this Board by letter dated August 5, 1983, does not constitute handling in the usual manner as required by Section 3 First (i) of the Railway Labor Act as amended or of Circular 1 of this Board. (See Third Division Awards No. 20279, No. 13741, No. 20569, No. 18964 and No. 20232.)

Furthermore, the Organization has failed to prove **that** the Carrier violated the Agreement by not calling the Claimant. The Organization has not refuted the Carrier's position that Mr. Ribble was called out to perform as a truck driver and not as a Machine Operator. Nor has the Organization refuted the evidence that Mr. Napper did not have a driver's license and so could not perform the required work. Furthermore, there is no proof **that the Carrier** either directed or authorized Mr. Ribble to operate BCD-II. Mr. Ribble operated the machine voluntarily, because he wanted to familiarize himself with its operation. Prior Awards establish that in cases in which the **employee** acted voluntarily in performing duties **other than** those to which he has been assigned by the Carrier, the Carrier is not in violation of the Agreement. (See Award No. 6 of Public Law Board No. 2795, Third Division Awards No. 24025 and No. 23574.1

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

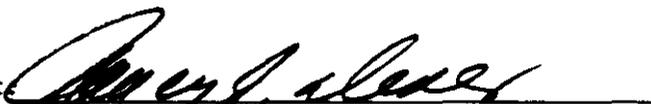
That the Agreement was not violated.

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 June 1985.

