

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26033

Docket Number MW-26021

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Highway Vehicle Operator Positions Nos. 68431, 68432 and 68433 as advertised by Bulletin Nos. 2017, 2018 and 2019, dated March 1, 1983 to clerks instead of trackmen-drivers (System File B-809/MWC 83-6-24A).

(2) As a consequence of the aforesaid violation, Trackmen-Driver J. G. Rosenbaum, F. Widmeyer, J. Bowers, R. L. Colvard and R. Johnson shall be allowed the difference between the trackman-driver's rate of pay and what they were paid at their respective rates of pay in lower rated positions beginning with the effective date of the assignment of the positions advertised by Bulletin Nos. 2017, 2018 and 2019 and continuing until the violation is corrected."

OPINION OF BOARD; Claim on behalf of five trackman drivers was initiated by the Organization April 27, 1983. The instant Claim alleges that Carrier violated the Scope Rule of the Maintenance of Way Agreement of August 1, 1975 when they bulletined truck driving positions of the Maintenance of Way to the Clerks not covered under the Agreement. It is further argued that the movement of Maintenance of Way materials from the storeroom has been performed historically and traditionally by employees covered by the Maintenance of Way Agreement and as such, the Carrier is in violation by using employees who are not those to whom the work belongs.

This Board has carefully reviewed the evidence as presented on the property and finds nothing in the Agreement Rules cited of clear and unambiguous language assigning such work as herein disputed exclusively to the Maintenance of Way ranks. Nor does this Board find sufficient evidence of probative value to establish that such disputed work has historically been performed exclusively by members of the Maintenance of Way by custom, practice and tradition on a system-wide basis. Letters of support documented by the Organization do not establish that the materials hauled were either solely Maintenance of Way materials or work exclusively performed by employees of the Maintenance of Way to the exclusion of Clerks and other Crafts. Carrier denies on property exclusivity and more importantly supporting documentation indicates that while Maintenance of Way employees have performed similar work in the past, so too have other Crafts.

The burden of proof lies with the Organization in its Claim at bar and it has failed to sustain its burden. It is the determination of the Board after a careful review of the governing Rules and accompanying evidence that such work of transporting supplies and materials as herein disputed has been a shared responsibility on this property. Such a ruling is consistent with past Awards of the National Railroad Adjustment Board (Third Division Awards 19264, 22761, 20792, 21294). As such is the case, the Claim must be denied as the Organization has not met its burden of proof.

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 Employee involved in this dispute are respectively Carrier and Employee 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

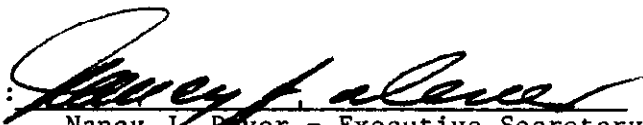
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

