

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it failed to assign the senior qualified available employee in Crew 219 to operate Truck No. ET8551, assigned to that crew (System File 45(k) 13-2/800-40-E-73).

(2) As a consequence of the aforesaid violation, Sectionman L. M. Johnson shall be allowed the difference between what he was paid at the sectionman's rate and what he should have been paid at the truck operator's rate beginning sixty (60) days retroactive from June 5, 1985 and continuing until the violation referred to in Part (1) hereof is corrected or ceases to exist."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 5, 1985, the Organization filed a Claim on behalf of Claimant, a sectionman assigned to Crew 219, seeking the difference between the truck operator's rate of pay and the sectionman's rate of pay, on the contention that Rule 45(k) of the Agreement was violated when the Carrier assigned a second truck to Crew 219, commencing March 7, 1985, without assigning a member of the Crew to be the driver of the vehicle. Rule 45(k) reads:

"Truck drivers in the track and B&B Department will perform track work and B&B work when they are not driving trucks. It is understood that when a truck is assigned to a B&B crew or a track crew, the position of truck driver will be assigned to the senior, qualified, available employee in the crew who wants the position."

Carrier denied the Claim on the basis that the vehicle assigned to Crew 219 on March 7, 1985, was the second vehicle assigned to the Crew and historically, in these circumstances, the Foreman or Assistant Foreman operated the vehicle on an as needed basis. It also argued that operating a truck was not work exclusive to the Maintenance of Way Agreement and the type of vehicle involved did not require any special licensing.

In our judgment, Rule 45(k) is clear and unambiguous. The second sentence unequivocally states that when a truck is assigned to B&B and track crews the position of truck driver will be assigned to the senior qualified member of the crew who desires the job. The Rule cannot be fairly read to be limited in application to a single truck per crew, the result urged upon us by Carrier. The facts involved in this Claim demonstrate that Truck No. ET8551 was assigned to Crew 219 on March 7, 1985. Such assignment falls squarely under the triggering language "when a truck is assigned to a ... crew" which then required that a member of the crew be assigned to a truck driver position. This was not done.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.