

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned Track Machine Operator O. Rodriguez instead of Truck Operator T. Knopf to operate a truck during overtime service on Saturday, January 10, 1987 in Madison, Illinois (System File 1987-3/013-293-19).

(2) As a consequence of the aforesaid violation, Truck Operator T. Knopf shall be allowed nine and one-half (9.5) hours of pay at his time and one-half rate."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The basic facts of this case are set forth as follows: On January 10, 1987, Carrier called out several Track Department employees for snow removal work at Madison, Illinois. Among those called was a Track Machine Operator, who was qualified as a truck operator and carried on the Group 1(c) seniority roster. He transported employees to and from various work locations. It was the Organization's position that said assignment violated Rule 31(f) of the controlling agreement, since the employee called was not a regularly assigned motor truck operator and thus not entitled to perform the regular and overtime work accruing to the motor operator truck's position. (See Third Division Award 3822). It did not dispute Carrier's contention that the track machine operator was a qualified truck operator and held greater seniority on the Group 1(c) roster, but it observed that both the track machine operator and motor truck positions were separately bulletined and assigned in accordance with the applicable provisions of the Agreement. It cited several

Third Division Awards to substantiate its position that Rule 31(f) was the operative rule. (See Third Division Awards 8414, 9460, 13824, 14029, 16253, et al.)

The Carrier contended that the employee called was a qualified truck operator and senior to Claimant on the Group 1(c) seniority roster. Specifically, it pointed out that to overlook the employee's seniority and qualifications would be inconsistent with the Controlling Agreement and the past practice observed on the property. It maintained that the Agreement did not provide for calling or using a less senior qualified employee irrespective of whether the employee was regular or extra. It noted that the work for which the employees were called was not a regular bulletined system gang assignment, but strictly extra work necessitated by inclement weather. It also asserted that Rule 31 (Overtime) mandated that the senior available employee will be given preference in performing overtime work on a call-basis. It cited Third Division Awards 13230, 22294, 22761 and 23894 as controlling.

In considering this case we concur with the Organization's position. The work performed by the track machine operator on January 10, 1987, was work that would have normally been performed by Claimant on his regular work days. In other words, had there been a requirement to move track forces for snow removal purposes on one of Claimant's normative work days, he would have been assigned the work, i.e., transporting via truck the M&W snow removal crew. Unlike Third Division Award 13230 cited by Carrier, where an Electrician was used to transport electrical ladders and materials, the work performed herein was completely Maintenance of Way work. Further unlike Third Division Award 22294, where the Board held that the record didn't support the Organization's contention that the Claimant in that dispute was specifically bulletined to operate the Speed Swing machine, the issue herein does not relate to equipment exclusivity, but to the type of work performed. There was also no assertion by Carrier as to how the overtime rules applied. In Third Division Award 22761 the issue is distinguishable and relates to whether Carrier may assign Foremen to operate company owned or leased trucks. To be sure, Carrier is correct that it is compelled to comply with Rule 31(g) when making overtime assignments, but it cannot disregard the last sentence of said provision which reads, "This is not to interfere with work on unassigned days covered by Paragraph (F) of this Rule." Paragraph (F) reads:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

Accordingly, since the Board has established that Claimant would have performed such work on his regularly assigned work days, then our prior ruling in Third Division Award 13824 is pertinent and controlling. It is undisputed that Claimant was the regular employee truck operator as opposed to the Machine Track Operator, the work of driving the truck for the purposes of transporting the M&W snow removal crew on January 10, 1987, was work that Claimant


would have normally performed on his regular work days and the work was not assigned to an eligible extra or unassigned employee. Under such circumstances, Rule 31 (f) obligated Carrier to call Claimant to transport the crews. Importantly, the issue herein is not equipment exclusivity, but rather work that accrues to a specific position.

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 7th day of August 1990.