

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29541
Docket No. MW-29723
93-3-91-3-70

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance
(of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Cleveland Division Machine Operators R. Eicher and J. Carrich instead of Youngstown Division Machine Operators D. Tredent and J. Agnew to perform machine operator work on the Youngstown Division on August 9, 30, 31 and September 1, 1989 (System Docket MW-852).

(2) As a consequence of the aforesaid violations, Mr. J. Agnew shall be allowed eight (8) hours of pay at the Class 2 Machine Operator's straight time rate and Mr. D. Tredent shall be allowed thirty-two (32) hours of pay at the Class 1 Machine Operator's straight time 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 employe 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.

At the time this dispute arose, Claimants D. Tredent and J. Agnew had established and held seniority as Class 1 and 2 Machine Operators, respectively, on the Youngstown Seniority District, and were regularly assigned and working as such. Machine Operators R. Eicher and J. Carrich had each established seniority as such on the Cleveland Seniority District but held no seniority on the Youngstown Seniority District. On August 8, 30, 31 and September 1, 1989, the Carrier assigned Machine Operator Eicher to operate a crane at Ashtabula, Ohio, on the Youngstown Seniority District. Eicher operated the crane picking up plates, rail, and scrap during this period of time, and expended 32 man-hours per day performing this work. On September 1, 1989, the Carrier assigned Machine Operator Carrich to operate a backhoe pushing scrap loaded by Eicher closer to the crane, and expended eight man-hours per day performing this work.

The Organization maintains that the Carrier violated the Agreement because it did not afford Claimants an opportunity to perform this machine operating work in accordance with their Youngstown machine operator seniority. The Organization argues that the Claimants were fully qualified and readily available to perform this work had the Carrier afforded them an opportunity to do so. The Organization further argues that this dispute involves bad faith on the part of the Carrier. The Organization contends the Carrier's actions in this matter represent an example of the Carrier's total disregard for its contractual obligation regarding the seniority district provisions of the Agreement, and its failure to live up to that obligation.

The Organization asserts that the Claimants suffered economically from the Carrier's action through loss of eight hours of straight time pay for Mr. Agnew, and 32 hours of straight time pay for Mr. Tredent. The Carrier contends that the Agreement does not provide for a penalty to be paid, and that the Organization has not made an affirmative showing that the Claimants experienced a loss of earnings.

The Organization alleges that Rule 4, Section 5(a) of the Agreement establishes separate seniority districts, and contends that work performed within a specific seniority district must be reserved for employees holding seniority thereon. The Carrier maintains that the yard facilities at Ashtabula, Ohio, were shared by work forces from both the Youngstown and Cleveland security districts as a matter of past practice. The Carrier further maintains that the work performed by Eicher and Carrich at Ashtabula was of an inconsequential nature and thus not reserved to employees holding seniority on the Youngstown Seniority District.

The Carrier argues that Claimants are not entitled to a monetary remedy based upon eight hours per claim date. The Carrier contends that Claimants were employed and working as Machine Operators at territory sites where Carrier had assigned them at the time of each claim date. The Carrier asserts that since Claimants have already received their wages for working on each of the claim dates, any such compensation allowed as a remedy would thus constitute a penalty and should therefore be denied. The Organization maintains that Claimants should be compensated for the full eight hours per claim date to prevent a de facto abolishment by Carrier of seniority district lines contrary to the provisions of the agreement.

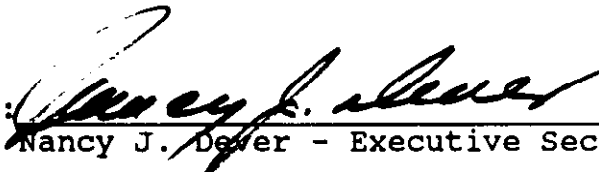
Both parties have cited several awards to support their respective positions. After reviewing said awards, the Board finds them to be inapplicable in this case. Based upon the file developed on the property, the Carrier is directed to pay Claimant J. Agnew two hours of pay at the Class 2 Machine Operator's straight pay rate for each claim date, for a total award of eight hours of straight pay. The Carrier is further directed to pay Claimant D. Tredent two hours of pay at the Class 1 Machine Operator's straight pay rate for each claim date.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.