

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29546
Docket No. MW-29916
93-3-91-3-300

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy 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 failed and refused to permit Mr. G. R. Broughman to displace junior employe D. E. Phillips from the track foreman's position on Gang TM-617 at New Lexington, Ohio beginning September 20, 1989 (System Docket MW-1095).

(2) As a consequence of the aforesaid violation, Mr. G. R. Broughman shall be allowed ten (10) hours of pay at the track foreman's straight time rate for each work day beginning September 21, 1989 and continuing until the violation is corrected. In addition, Mr. Broughman shall be allowed compensation at the track foreman's overtime rate for all overtime hours worked by Mr. D. E. Phillips as a track foreman during the claim period."

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.

The record in this dispute contains a statement by the Claimant that on September 21, 1989 he travelled to New Lexington, Ohio, and informed the Supervisor that he wanted to bump Mr. D. E. Phillips, who was temporarily working a Foreman position. He states that the Supervisor prevented him from making the displacement. The record also contains the following hand-written statement by the Supervisor: "Mr. Broughman never asked me to bump Mr. Phillips so this time claim should not be paid."

The Board finds that it has been presented with irreconcilable statements of facts by the parties, and that it has neither the authority nor the competence to resolve factual disputes such as this. Under well-established precedents of the Board, the claim must therefore be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

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