

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29847
Docket No. MW-29819
93-3-91-3-174

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 assigned and used Car Department employe M. Parmagan to repair windows and awnings at the Ashtabula Car Shop on September 25, October 2 and 9, 1989 and continuing (System Docket MW-946).
- (2) As a consequence of the violation referred to in Part (1) hereof, Claimant Behan shall be allowed eight (8) hours per day at his straight time rate of pay for September 25, October 2 and 9, 1989 and continuing as per Rule 26 until the violation ceases."

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.

As Third Party in Interest, the Transport Workers Union of America was advised of the pendency of this dispute, but did not file a Submission with the Board.

The Organization filed this Claim after the Carrier assigned a Car Department employee to perform painting duties and mainte-

nance of windows and awnings on September 25, October 2 and October 9, 1989 at the Ashtabula Car Shop. Claimant, a B & B Foreman at the Ashtabula Car Shop, was fully employed on the specific dates stated in the Claim.

A review of the Agreement makes it evident that this is work belonging to the B & B Department. While the Carrier contended on the property that there was a past practice of assigning this work to members of the Car Department, the Organization vigorously contested this assertion, and the Board notes that the Carrier provided no evidence on the property to buttress its contention. We therefore conclude that the Carrier violated the Agreement as claimed by the Organization.

During its presentation before the Board, the Carrier argued that its liability should be limited to the three dates stated in the Claim. The record is clear that the Organization filed the instant Claim as a continuing claim, however, and it will be so treated by the Board. While Claimant was fully employed on the three dates cited in the Claim, and thus suffered no monetary loss, the Carrier is directed to examine its work assignment records and determine whether Claimant was on duty and under pay on each additional date the work in question was assigned to the Car Department employee, and to make the appropriate adjustment in the Claimant's compensation for any missed work opportunities.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.