

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29923
Docket No. MW-29582
93-3-90-3-531

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 employe J. Rosario instead of Youngstown Division employe D. McCullough to perform log loader work (hauling ties, stacking ties and handling other material) on the Youngstown Division at West Yard and Harbor Yard in Ashtabula, Ohio on June 5 and 6, 1989 (System Docket MW-625).

(2) As a consequence of the aforesaid violation, Mr. D. McCullough shall be allowed sixteen (16) hours of pay at his 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.

Agreement provisions pertinent to the instant dispute are as follows:

"Section 5. Seniority districts.

(a) The operating division seniority districts shown in Appendix 'C' and the following separate seniority districts are established:

Canton MW Shop
Toledo Welding Plant
Columbus Welding Plant
Lucknow Welding Plant
Reading Frog & Switch Reclamation Plant
Indiana Harbor Belt Operated Territory
Secretary's Department, Philadelphia
Inspector Scale-System

* * *

Section 6. Seniority rosters.

(a) A roster, revised as of January 1 and to be posted March 1, showing the employee's seniority date in the appropriate seniority district will be posted within such seniority district at headquarter points where employees are required to report for work. Copies of all rosters will be furnished the General Chairman and the involved local representative(s)."

Prior to July 1988, the Cleveland Seniority District maintenance gang was headquartered at Painesville, Ohio. The Youngstown Seniority District maintenance gang was headquartered at West Yard, Ashtabula, Ohio, in the Youngstown Seniority District. West Yard then became a headquarters location occupied by both the Cleveland Seniority District gang and the Youngstown Seniority District gang. West Yard was used by both Youngstown and Cleveland Districts as an on and off duty point, and additionally, both districts were assigned the West Yard as their respective materials location.

At the time of this dispute, Claimant was assigned as a Vehicle Operator in the Youngstown Seniority District headquartered at West Yard, Ashtabula, with tour of duty 7:00 A.M. - 3:00 P.M. rest days of Saturday and Sunday. J. Rosario was also assigned as a Vehicle Operator but in the Cleveland Seniority District headquartered at West Yard, Ashtabula, with tour of duty and rest days identical to Claimant. On the dates involved, both Claimant and Mr. Rosario were performing various duties such as hauling and restacking materials at Ashtabula.

On July 5, 1989, the Organization submitted a claim for 16 hours pay, maintaining that Carrier had violated Rule 4, Section 1, and Appendix "C", when it permitted Vehicle Operator Rosario to perform log loading duties on the Youngstown Seniority District in the West Yard at Ashtabula, on June 5 and 6, 1989, in lieu of Claimant.

For its part, Carrier reiterated the events culminating in the consolidation of headquarters for the Youngstown and Cleveland Seniority Districts, and maintain that "no protest of this arrangement was made until the receipt of this claim, some 11 months later." Further, Carrier asserts that on June 5 and 6, 1989, Cleveland District Vehicle Operator Rosario loaded ties into his truck from the Cleveland District West Yard Material Storage area and hauled them to his gang who were renewing ties at another location in the Cleveland Seniority District. Claimant was on duty and under pay on same dates performing similar obligations for his gang in the Youngstown Seniority District. According to the Carrier, Rosario only performed work at the West Yard which was in support of his own gang, and did not perform work "accrued to, or associated with" work on Claimant's Youngstown Seniority District.

According to the Organization, the Carrier violated the Agreement when it assigned Rosario, an employee whose seniority was confined to the Cleveland Seniority District, to perform the duties of handling track material on the Youngstown Seniority District. Further, the Organization asserts that the Claimant was "available, willing and would have expeditiously" performed the work had he been given the opportunity. The Organization concedes that the Claimant was employed at the time of the incident; however, the Organization maintains that Claimant should be awarded monetary remedy as he would have been entitled to overtime in order to perform the duties at issue.

The dispute before us presents the following question: Did a Cleveland Seniority District employee perform work which rightfully belonged to a Youngstown Seniority District employee? A careful review of the evidence before us, persuades us that the question must be answered in the negative.

The Organization relied heavily on Appendix "C", a map of the Youngstown and Cleveland Seniority Districts prior to July 1988. Clearly, the Districts were geographically quite distinct. However, subsequent to the headquarter consolidation in July 1988, those borders became less distinct as a result of shared facilities, particularly shared storage facilities at the common headquarters location.

The work at issue, performed by a Cleveland Seniority District employee, was transporting Cleveland Seniority District materials to a Cleveland gang for work on the Cleveland District. On the same dates, Claimant was performing similar duties for the Youngstown Seniority District gang, obtaining Youngstown District materials from the shared storage location.

Form 1
Page 4

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Docket No. MW-29582
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This Board finds that the Carrier did not violate the effective Agreement provisions. Therefore, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1993.