

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29958  
Docket No. MW-29951  
93-3-91-3-338

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 it assigned junior Machine Operator L. Dukes instead of furloughed Machine Operator C. Davis to fill a temporary machine operator vacancy beginning September 27 through October 12, 1989 (System Docket MW-1001).
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Machine Operator C. Davis shall be allowed ten (10) hours' pay at the applicable class 3 Machine Operator's rate for each work day beginning September 27 through October 12, 1989."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was a furloughed Class 3 Machine Operator on the Carrier's Youngstown Division during the period of this Claim. Between September 27 and October 12, 1989, the Carrier temporarily upgraded a Trackman-Operator to operate a Machine Operator Class 3 machine on eight days, and a Class 2 Machine Operator machine for one day.

The Organization contends that the Claimant, a senior furloughed Trackmen, should have been recalled from furlough to perform the work. The Carrier contends that it has the right under the Agreement to temporarily assign employees to different classes of work.

The applicable provisions of the Agreement read in pertinent part as follows:

"Rule 1, Scope, Paragraph 4:

The listing of the various classifications in Rule 1 is not intended to require the establishment or prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement.

Rule 19 - Assignment to Higher or Lower Rated Positions

An employee may be temporarily assigned to different classes of work within the range of his ability. In filling the position which pays a higher rate, he shall receive such rate for the time thus employed, except, if assigned for more than four (4) hours, he shall receive the higher rate for the entire tour. If assigned to a lower rated position, he will be paid the rate of his regular position."

In Third Division Award 29582, between the parties, the Board concluded that this Agreement language permitted the Carrier to temporarily assign work outside of current classifications. A similar conclusion was reached in Third Division Award 26761, where the Board stated:

"Nevertheless, the Board finds that the reading of Rule 1 sanctions the Carrier's action in this particular instance. Rule 1 refers to 'primary duties', not exclusive duties, of each classification. The fourth paragraph is obviously designed to allow some leeway among

classifications which might not otherwise be clearly provided."

We concur with these Awards, and observe that while the Carrier had the option of going to the furlough list for work of less than thirty days duration, it also clearly had the right under the Agreement to temporarily assign employees from other job classifications to do the work. We thus conclude, based on the record before us, that the Carrier did not violate the Agreement when it made the assignments in question, and we will therefore deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

Catherine Loughrin  
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.