

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29959
Docket No. MW-29969
93-3-91-3-361

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 Employes
(
(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 bulletin and assign a foreman to work with the jimbo crane operated by Machine Operator G. A. Blackman beginning on January 3, 1989 and continuing, between Binghamton and Waverly, New York (System Docket MW-739).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall bulletin a foreman's position to be assigned to the jimbo crane.
- (3) As a consequence of the violation referred to in Part (1) above, Claimant K. R. Sindoni shall be allowed ten (10) hours' straight time pay at his foreman's rate of pay and all overtime pay at his foreman's time and one-half rate for the time worked by the jimbo crane operator."

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.

During January 1989, a Machine Operator was assigned to operate a Jimbo Crane for debris removal work in the Carrier's

Southern Tier Zone 4. Claimant, a furloughed Foreman in the same territory, filed a Claim for back pay, to be continuing until the work involved with the Jimbo Crane was complete or a Foreman position was advertised to supervise the Machine Operator.

The Organization contends that the Carrier required the Machine Operator to act as both Machine Operator and Foreman and that it should have bulletined and assigned a Foreman to perform the duties of supervising the work at issue here.

During the handling on the property, the Carrier made the following material statement:

"With regard to your argument that Foremen are 'in charge' of work trains, the fourth paragraph of the Scope clearly defeats this. While Foremen have occasionally been assigned to Jimbo Cranes in the past, the decision to do so was made on a case-by-case basis, depending on the nature of the work to be performed. In the instant case, the additional duties the Machine Operator had to perform were of such a limited nature, having a Foreman on the site would have been extremely unnecessary."

The following provision of the Agreement is pertinent to a resolution of this dispute:

"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."

While the Carrier raised various procedural objections in this matter, it would be best to proceed directly to the merits of the dispute. The Organization has made numerous conclusionary allegations in this case, but it failed to rebut the Carrier's material assertion on the property that, while Foremen have occasionally been assigned to Jimbo Cranes in the past, the decision to do so

has been made on a case-by-case basis, depending on the nature of the work to be performed. This assertion thus stands as established fact. Given the express terms of the Scope Rule, we conclude that the Carrier cannot be compelled to establish the new position as claimed by the Organization.

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.