

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30983
Docket No. MW-30780
95-3-92-3-591

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier used Apprentice Foreman A. R. Didomenico to operate a heavy duty truck to haul material and machinery on the Pratt District from April 18 to May 31, 1991 instead of assigning Machine Operator J. P. Sheahan (System File MW-91-47-CB/502-48-A).
- (2) As a consequence of the above-mentioned violation, Machine Operator J. P. Sheahan shall be allowed two hundred forty-eight (248) hours' pay at his straight time rate of pay and pay for any overtime hours expended by Mr. Didomenico operating the heavy duty truck in question."

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.

In early April 1991, Carrier abolished one of its Heavy Duty Truck Operator positions in Pratt, Kansas, and subsequently reestablished the same position in Meade, Kansas, a distance of approximately 100 miles. Claimant was assigned to the Heavy Duty Truck Operator position at Pratt, but chose not to transfer to Meade when the opportunity arose. Instead, Claimant chose to leave that position and transferred to a per diem Heavy Duty Truck Operator position assigned to Track Gang 341, some 46 miles closer to Pratt, Kansas.

Carrier advertised the vacant position at Meade, however, despite two bulletin periods, the Heavy Duty Truck Operator position at Meade went "no bid." Eventually, the position at Meade apparently was filled by bid. In the meantime, there were no furloughed employees to recall to the position. Pending assignment by bulletin, during the period April 18 through May 31, 1991, Carrier assigned Apprentice Foreman A. Didomenico as the only available qualified employee to operate the Heavy Duty Truck at Meade. In this claim, the Organization asserts that Carrier violated Claimant's rights under Rules 2,6,8,17 and 24 of the Agreement by not calling and using him to cover the position at Meade, pending assignment by bulletin.

The Organization filed a claim for "248 hours straight-time rate of pay as expended by Apprentice Foreman A. Didomenico used to operate heavy duty truck to haul material and machinery." Carrier denied that claim asserting that Claimant had "every opportunity" to bid on the position, but "elected to remain on the heavy duty truck assigned to Extra Gang 341." Carrier further noted that Claimant "worked and was compensated" for each day during claim period.

Following a careful review of the record evidence presented, we must conclude that Carrier did not violate the Agreement when it assigned Apprentice Foreman A. Didomenico, rather than Claimant, to the Heavy Duty Truck Operator position at Meade, Kansas, for the period April 18-May 31, 1991. Carrier properly bulletined the position at issue, and any qualified driver, including Claimant, wishing to bid on that job was given the opportunity to do so. Carrier did not restrict Claimant's rights at any juncture during the bidding process, and Claimant affirmatively rejected the opportunity to follow the position or to bid on it at Meade. On claim dates, Claimant not only was "fully employed" driving a Heavy Duty Truck at a different location for greater compensation inclusive of the "per diem," but he performed and was compensated for some 54 hours of overtime on the other assignment. We find no violation of his Agreement rights on this record.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.