

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31076  
Docket No. MW-30640  
95-3-92-3-417

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Production Engineer W. McCurdy to perform Maintenance of Way work operating a spiker on the Tie Gang at Conway on November 5, 1990 (System Docket MW-1840).

(2) As a consequence of the violation referred to in Part (1) above, Claimant M. D. Spikerman shall be allowed twelve (12) hours' pay at the applicable rate for the time spent by the production engineer in performing the Maintenance of Way work on November 5, 1990."

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.

This claim arose when, on November 5, 1990, it is alleged that the Carrier used a production supervisor to perform machine operator's duties with a tie gang located at Conway, Pennsylvania. The Organization filed the instant claim contending that the Carrier failed to recall from furlough status the Claimant who held seniority as a machine operator in the Track Department.. The Organization argued that the Claimant was fully qualified and available to perform this assignment.

The Carrier denied the claim arguing that the Claimant, who was displaced on October 30, 1990, began his three-week vacation on November 1, 1990, and went into furlough status on November 26, 1990. On the date in question, several members of the tie gang at Conway were absent; therefore, the supervisor "lent assistance to the operator of the spiker machine".

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it had Supervisor McCurdy assist the spike machine operator on November 5, 1990. The record reveals that there was a manpower shortage on that date and that the supervisor did perform some work on the spike machine, work that is reserved by the Scope Rule for employees represented by the Organization. However, the fact that the supervisor assisted the spike machine operator, does not by and of itself represent a violation of the Agreement. There has been no showing that he worked all day or that his assisting on the spike machine displaced any Organization represented employees. The Organization is correct that the Carrier may not assign supervisors to perform Scope covered work. However, there has been no showing that the Carrier did that in this case.

The Organization has failed to prove that the supervisor performed machine operator duties sufficient to constitute a violation of the Scope Rule. In addition, there is some question as to whether or not the Claimant, who received vacation pay on the date of the incident, would have been entitled to be called in for the disputed work if the supervisor had worked in violation of the Scope Rule.

For all of the above reasons, the claim must be denied.

**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 1st day of September 1995.