

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31350
Docket No. MW-30979
96-3-92-3-887

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 the Carrier assigned Mr. C. Nevels to perform vehicle operator duties at Thompson Yard on June 21, 1991 instead of calling and assigning Vehicle Operator J.T. Bell to perform said work (System Docket MW-2176)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J.T. Bell shall be allowed fourteen and one-half (14.5) hours' pay at his time and one-half overtime 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 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.

On June 21, 1991, Carrier experienced a derailment in Thompson Yard, Duquesne, Pennsylvania. At the time, Claimant had been assigned to a vehicle operator's position. A fellow employee, Mr. Nevels, held seniority as a backhoe operator and was regularly assigned to the Thompson Yard. On the date in question, Mr. Nevels was called in on his rest day to work overtime.

By letter of June 27, 1991, the Organization filed a claim requesting 14.5 hours overtime for Claimant. In that claim, the Organization maintained that Nevels performed vehicle operator's work for all 14.5 hours on June 21, 1991, in violation of various rules including Rule 17 - "Preference for Overtime Work." Rule 17 reads as follows:

"Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority."

Carrier denied the claim and it was subsequently progressed in the usual manner. Following conference on the property, it remained unresolved.

It is the position of the Organization that Claimant, by virtue of his assignment to a vehicle operator's position was entitled to be called for the overtime work at issue. Mr. Nevels was not regularly assigned as a vehicle operator but, rather, was regularly assigned as a machine operator -- an entirely different classification. Thus, he lacked standing to perform vehicle operator's work in Claimant's stead. In support of its position, the Organization has supplied a note from Mr. Nevels, stating that on the date in question "... [his] job for the day was to operator [sic] the boom truck which [he] did from starting time to quieting [sic] time."

Carrier disputes the Organization's description of Mr. Nevels's work day on June 21, 1991. According to the Carrier, a third employee -- Valiquette -- a vehicle operator senior to Claimant, was called in on the date at issue to perform vehicle operator work. Nevels was called in to operate a backhoe. The Carrier maintains that Nevels operated the backhoe until Valiquette, who was operating a log loader, had to leave after ten hours of work. In support of its position, Carrier presents a statement from a Carrier officer confirming Carrier's position, as well as a copy of the pay records from the date in question showing that Nevels was compensated for 14.5 hours at the machine operator's rate, not at the vehicle operator's rate.

As has been well established on this and other Boards, because of the appellate nature of these proceedings, the Board is without power to resolve irreconcilable contradictions in determinative "facts." (PLB No. 2037, Award 5; SBA No. 910, Award 187). Accordingly, this Board has no choice but to dismiss the instant claim.

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AWARD

Claim dismissed.

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 25th day of January 1996.