

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31422
Docket No. MW-30785
96-3-92-3-585

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
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on May 11 and 12, 1991, the Carrier utilized Car Department personnel to operate a backhoe assigned to Section Force 6FG2 at Savannah, Georgia [System File EHS-91-48/12(91-1161)SSY].
- (2) Because of the aforesaid violation, Backhoe Operator E. H. Sams shall be allowed compensation for twenty-eight (28) hours at his machine operator's overtime rate of pay."

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 employee 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.

As a possible Third Party in Interest, the Brotherhood Railway Carmen of the United States and Canada was advised of the pendency of this dispute, but elected not to file a Submission with the Board.

Claimant established and holds seniority as a Class III Machine Operator within the Track Subdepartment. He was regularly assigned as such to Section Force 6FG2 at Savannah, Georgia. His normally assigned workweek was Monday through Friday, with Saturday and Sunday designated as assigned rest days. As part of his regular duties he often operated a backhoe to assist track maintenance personnel.

On May 11, 1991, Carmen within the Mechanical Department were repairing a box car located on a rip track at Carrier's Savannah facility. During the repair, the Carmen inadvertently set fire to the contents of the car. After subduing the fire, the Carmen used the backhoe located at the facility to unload the damaged lading. That clean-up work was performed on May 11 and 12, which were Claimant's rest days.

The Organization filed a claim for 16 hours at the overtime rate for May 11, and 12 hours at the overtime rate for May 12, 1991, alleging that the backhoe in question was "assigned to" Gang 6FG2, that Claimant had "maintained" that piece of equipment, and was its "assigned operator." Carrier responded with a challenge to the "vagueness" of the claim and also asserted that:

"Said work was and is clearly work which accrues to the Car Department personnel and is not covered by the Scope of the Maintenance of Way Agreement."

Finally, Carrier noted that the backhoe is not "exclusively confined" to Claimant.

The Organization alleged that Carrier violated numerous Agreement Rules when it "allowed" Car Department personnel to operate a backhoe "assigned to and maintained by" MofW Section Force 6FG2. In order to prevail, the Organization must prove reservation to Machine Operators, by express Agreement language or by systemwide custom, practice and tradition, of the work of backhoe operation for any and all purposes. As the moving party, it was incumbent upon the Organization to thus substantiate its claim, which it was unable to do.

The piece of equipment at issue was purchased and owned by Carrier and is stored on Carrier's property. Claimant apparently "normally" maintained and often operated that backhoe to perform track related work; but that does not entitle him to exclusive use of that machinery or prevent Carrier from allowing or assigning employees of another craft to use that particular tool to perform a facet of their work. Nor is there any showing on this record that Claimant operated the backhoe for other than M of W work.

The machine at issue is simply a tool, and the nature of the work it is being used to perform determines whether Claimant is entitled to be called in on overtime to operate the machine. In this particular situation, the removal of lading damaged by Carmen performing car repair work was work of the Car Department rather than the Track Subdepartment.

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 21st day of March 1996.