

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31624
Docket No. MW-31192
96-3-93-3-192**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier abolished camp car positions at New Castle, Pennsylvania on August 2, 1991 and thereafter failed and refused to advertise and assign camp car attendant positions to perform the duties required to maintain the sanitary standards as specified in Rule 38 (System Docket MW-2400).

2. As a consequence of the violation referred to in Part (1) above, the Carrier shall re-establish and bulletin the camp car attendant's positions at New Castle, Pennsylvania and Claimants N. Aquino and J. Lazar shall each be allowed ten (10) hours' straight time pay at the camp car attendant's rate of pay beginning August 2 through September 3, 1991 and continuing until said positions are advertised and awarded."

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.

Effective August 2, 1991, Carrier abolished two camp car attendant positions and, simultaneously, advertised two camp car cook positions. The Organization contends that historically the camp car attendants have been responsible for keeping the camp cars clean, keeping them well stocked with clean bed linens and sanitary paper products, and general janitorial duties to maintain a clean living environment. The Organization maintains that these duties are required to fulfill Carrier's obligations under Rule 38(b). The Organization argues that Carrier violated the Agreement by ignoring its obligations under Rule 38(b) or by assigning the camp car attendant duties to other employees who the Agreement does not authorize to perform them.

Carrier argues that it has the inherent managerial right to abolish positions. Carrier further maintains that the camp car attendants did not have the exclusive right to perform the duties at issue. Carrier observes that the camp car cook positions are on the same roster as camp car attendant positions and that it would not violate the Agreement for cooks to assume the duties at issue in this case. Furthermore, Carrier contends that the Organization has failed to prove the existence of any violation of the Agreement.

The Board has reviewed the record carefully. In the absence of restrictions in the Agreement, Carrier has the right to abolish positions and rearrange work. See, e.g. Third Division Award No. 20726. The fourth paragraph of the scope rule reaffirms this right, expressly declaring that the listing of classifications in Rule 1 "is not intended to require the establishment or to prevent the abolishment of positions in any classification ..."

The Scope Rule also provides: "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." Furthermore, prior decisions of this Board recognize that Rule 1 lists the primary duties of each class and allows for some leeway among classifications. See, e.g., Third Division Awards 29582, 26761. The Organization has the burden of proving that work was improperly assigned in violation of the agreement. See, e.g., Third Division Award 30775.

In the instant case, the Organization has offered no proof as to which employees performed what tasks involved in maintaining the cleanliness of the camp cars or the

degree to which they performed those tasks. Accordingly, the Organization has failed to carry its burden of proving that those tasks were improperly assigned in violation of the Agreement.

Rule 38(b) requires that Carrier maintain the camp cars in a clean and healthful condition. It further specifies the equipment and supplies that Carrier must provide. Although the Organization has asserted that abolishment of the camp car attendant positions has violated Rule 38(b), it has offered no proof that the camp cars were not maintained in accordance with Rule 38(b). It has offered statements by employees supporting the retention of the camp car attendants, but no specific evidence that Carrier did not maintain the camp cars as specified in Rule 38(b). Accordingly, the claim must be denied for lack of proof.

AWARD

Claims 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 29th day of August 1996.