

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31705
Docket No. MW-30292
96-3-92-3-5**

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior employees J. Trippi and D. Malloyram, to operate the Item TC 1004 on the Youngstown Seniority District after the TCOM was abolished on October 11, 1990, instead of assigning senior Class 1 Machine Operators D. Shelly and A. Putman to perform such work on their Youngstown Seniority District territory (System Docket MW-1573).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall each be compensated for ten (10) hours for each date from October 15, 1990 through November 8, 1990 at the C1-1 rate of pay. Expenses and overtime are also being claimed that the junior employees were compensated during the violation permitted by Conrail."**

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.

Between October 15 and November 8, 1990, the Carrier operated Track Machine TC 1004 to perform crosstie replacement at Wooster, Ohio, a point located within the Youngstown Seniority District. The Machine was operated by Machine Operators Trippi and Malloyram, who hold seniority on the Hudson-Mohawk and the Chicago Seniority Districts, respectively. The Claimants, who are Machine Operators on the Youngstown Seniority District, have seniority dates older than Trippi and Malloyram. At the time of the claim, the Claimants were assigned to the Gauging Gang at Wooster. The Organization contends the Claimants should have been used in preference to junior employees.

The TC 1004 is part of a Plasser-Theurer Tie Change Out Machine (TCOM). The TCOM consists of three sections, of which the TC 1004 is the rear section. On January 22, 1988, the parties entered into an Agreement concerning the operation of the TCOM, with the understanding employees assigned to the TCOM would work across the entire system without regard to seniority districts. Positions on the TCOM are bulletined to employees on all operating division seniority districts.

Prior to October 11, 1990, the Claimants were assigned to the ballast regulator on the center section of the TCOM. Trippi and Malloyram were assigned to the rear section. On October 11, 1990, the TCOM ceased to operate as a unit as the production season had ended. The Organization insists the positions held by Trippi and Malloyram were abolished at that time, as were the Claimant's. The Carrier's Submission suggests the TC 1004 positions were not abolished. The Organization objected to any contention by the Carrier that these positions had not been abolished in that no such allegation was made during the handling of the dispute on the property. We find, however, that a decision in this case may be reached without addressing that issue.

The Organization's principle argument is that the TC 1004, when operated by itself, is simply another track machine and not subject to the TCOM Agreement. It submits the TCOM Agreement was intended to cover the operation of the machines only when they worked as a unit. An examination of the TCOM Agreement shows the Organization's argument to be incorrect. When the Agreement was written in 1988, the Carrier anticipated receiving only the center section of the TCOM that year. It expected the front and rear sections to arrive before the 1989 production season. Nevertheless, the parties agreed on the operation of the center section before the other two parts had been delivered. The Carrier, therefore, violated no Rule when it abolished the TCOM unit as a whole, but worked one unit from October 15, through November 7, 1990.

The Carrier maintains the Claimants were not qualified to work on the TC 1004. Other than stating they had worked on the ballast regulator of the TCOM, the Organization has not shown them to be qualified on this particular piece of equipment. Under the circumstances in this case, the Carrier was privileged to use qualified employees, rather than the Claimants. The Agreement, therefore, was not violated.

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 29th day of August 1996.