

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31707
Docket No. SG-32126
96-3-94-3-294**

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of J. N. Derenak Jr., for payment of 180 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Classification Rule, when it allowed a foreman to operate a backhoe from February 18 to March 22, 1993, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. SG-578, General Chairman's File No. RM2462-40-793. BRS File Case No. 9292-CR."

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 were given due notice of hearing thereon.

On February 17, 1993, Claimant, a C & S Maintainer, was furloughed from his position at Clearfield, Pennsylvania, due to force reduction.

Claimant and Foreman R. A. Stevens were qualified to operate a backhoe. Assistant Foreman J. C. Ploski was not qualified to operate that equipment. During the period February 18, 1993 through March 22, 1993 Foreman Stevens operated a backhoe installing power cable on the Carrier's Pittsburgh Main Line. The Organization asserts that Foreman Stevens' operation of the backhoe during this period improperly deprived Claimant as the senior furloughed employee of the opportunity to perform the work.

The thrust of the Carrier's defense to the claim is that Foreman Stevens was training Assistant Foreman Ploski to operate the backhoe. Ploski states in his statement:

"... At this time the foreman instructed me on the operation of the backhoe but I did not physically run the backhoe. I did receive daily instruction but I did not do the actual work...."

Foreman Stevens states in his statement:

"... I instructed him [Ploski] on Back Hoe operating procedures. He did not feel comfortable digging around the 2300 Power Cable that was buried, when the opportunity arose...."

This case turns on whether Foreman Stevens could operate the backhoe in this specific situation under the assertion that he was training Assistant Foreman Ploski while Claimant was in furloughed status.

For purposes of this case, we shall accept the general proposition advanced by the Carrier that a Foreman can operate a backhoe in a training capacity when instructing an Assistant Foreman. But here, that "training" went on for almost five weeks and the Assistant Foreman never even operated the equipment during that period. There comes a point where "training" crosses the line and constitutes the performance of work that otherwise would have been performed by Claimant. Here, given that Assistant Foreman Ploski "did not feel comfortable digging around the 2300 Power Cable", and thus did not operate the equipment, the conditions for training under the circumstances of this case were not appropriate. In this circumstance where for almost five weeks the employee being trained declined or was unable to operate the equipment, the Carrier could not continue having the Foreman operate that equipment and still assert that a valid training experience was being administered. When it became apparent that Ploski was either unwilling or unable to operate the equipment given the nature of the work being performed (*i.e.*, digging around the 2300 Power Cable), that training experience was over and Claimant should have been called to perform the work.

In terms of a remedy, and taking into account that we have accepted the Carrier's argument that a foreman can operate equipment in a training capacity, we shall give the Carrier the benefit of the doubt. Given the facts of this case, it is reasonable to conclude that the Carrier should have become aware after one week that Assistant Foreman Ploski was either unable or unwilling to operate the backhoe. It is reasonable to conclude that Claimant should have been called at that point. Claimant's backpay entitlement shall therefore be reduced by one week of the claimed period of February 18, 1993 through March 22, 1993. Claimant shall otherwise be made whole.

We have considered the Carrier's other arguments and find them to be without merit under the particular circumstances of this case.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of September 1996.