

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31822  
Docket No. MW-31289  
96-3-93-3-335**

**The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Houston Belt & Terminal Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

**(1) The Carrier violated the Agreement when it assigned Laborer J. Cook to perform mechanic's work (repaired Tamper No. 133) on March 3, 1992, instead of assigning a roadway equipment mechanic to perform said work.**

**(2) As a consequence of the violation referred to in Part (1) above, Roadway Equipment Mechanic M. Davis shall be compensated at his straight time rate of pay for the three (3) hours expended by Laborer J. Cook in the performance of said work."**

**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 March 3, 1992, the Carrier assigned Laborer J. Cook to perform electrical repairs to Tamper No. 133. Mr. Cook had established no seniority in the Roadway Equipment Mechanic class. Claimant M. Davis had established and held seniority as a Roadway Equipment Mechanic. On March 3, 1992, Claimant was regularly assigned as such and was performing mechanic's service for the Carrier.

The Organization argues that the Carrier violated Rule 2 (Seniority) and other applicable portions of the Agreement when it assigned a Laborer who held no seniority in the Roadway Equipment Mechanic class, instead of the Claimant, to perform the repair service on Tamper No. 133 on March 3, 1992. The Carrier defends its actions on the grounds the Claimant was performing work elsewhere for the Carrier at the time of the alleged violation and the Claimant suffered no damages because he was on duty and under pay. Additionally, the Carrier argues that it was entitled to assign the work to Laborer Cook under the provisions of Article XI of the 1991 National Agreement (Intra-Craft Work Jurisdiction).

The record establishes that the Claimant was qualified and could have been assigned to the work in question. It is clear from the record that Laborer Cook held no seniority as a Roadway Equipment Mechanic. The Organization therefore has made a prima facie case that the Carrier violated the seniority provisions of Rule 2 when it assigned the mechanic's work to Laborer Cook. Article XI of the 1991 National Agreement provides in relevant part:

**"INTRA-CRAFT WORK JURISDICTION**

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW. Compensation shall be at the applicable rate for the employee performing the service and shall not constitute a basis for any time claims by other employees. This provision is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope and classification rules."

The Carrier argues that Laborer Cook was allowed to perform an incidental task that was directly related to the service he was performing and which he was clearly capable of performing. However, no proof in support of this assertion was adduced in the handling of this dispute on the property to justify the crossing of craft lines. In short, the Carrier failed to meet its burden of proof in support of its defensive claim.

Based on the Board's review of the record, there is sufficient evidence to establish that a violation of the Agreement occurred on March 3, 1992 when the Carrier assigned Laborer J. Cook to perform Mechanic's work instead of assigning a Roadway Equipment Mechanic to perform said work. No adequate defense has been established. The Claimant therefore shall be compensated at his straight time rate of pay for the three hours expended by Laborer Cook in the performance of said work.

### **AWARD**

**Claim sustained.**

### **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 26th day of December 1996.**