

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33223
Docket No. MW-32129
99-3-94-3-533**

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
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier abolished the 2 Ton Truck #01771 truck driver's position assigned to Gang 8911 on August 17, 1993 and, thereafter, assigned said truck without a regularly assigned truck driver beginning August 18, 1993 and continuing (System File MW-93-40-OKT/930725 OKT).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. B. C. Hill shall be compensated ‘... for 104 hours at his respective straight time rate of pay and all overtime per Carrier records on a continuing basis account position abolished and Carrier still used truck.’ beginning August 18, 1993 and continuing.”**

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.

B. C. Hill (Claimant) has established and holds seniority as a Truck Driver. At the time this issue arose, Claimant was assigned to System Gang 8911 at Moran, Kansas. On June 17, 1993 Carrier bulletined a 2-Ton Plus Truck Driver position on Gang 8980; a gang which could be utilized across the entire system covered by the 8900 Roster. The Gang 8980 Truck Driver position was bulletined with headquarters "on-line" but, at that time, Gang 8980 was working in Stringtown, Oklahoma. Claimant was senior bidder, and was assigned to the position, specifically Truck No. 01771, on June 21, 1993.

Effective August 17, 1993, the position to which Claimant had been assigned on June 21 was abolished. About one month later, on September 15, 1993 the Organization filed a claim on behalf of Hill alleging that Carrier continued to use Truck No. 01771 on System Gang 8911 in the vicinity of Moran, Kansas, on "a daily basis from August 18, 1993 and continuing." Specifically, the Organization maintained:

"The truck has been used 8 hours each day on August 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, September 1, 2, 3 and continuing through present day. This truck has been working in the vicinity of Moran, Kansas, M.P. 94.7. The truck has been sent South to the Dallas, Texas area and is still not advertised.

It is our position that when a job is abolished, this means that no employee is still working the position. It is further our position that the claimant was willing, available and fully qualified to perform all nature of the work since he was assigned to the position before the Carrier abolished the position on August 17, 1993, but was not allowed to continue the duties. By abolishing the job and letting a junior employee continue to work the position the Carrier has violated the current Agreement."

Carrier denied the claim, asserting at the outset that "Carrier, at its prerogative, may abolish and establish gangs to coincide with the work forces. The truck driver position was properly abolished at Moran, Kansas and was re-established at Dallas, TX." Carrier further noted that following his cutoff, Claimant bid on and was assigned to another 2-Ton Plus Truck Driver position on Gang 9168. Carrier maintains that Claimant was "fully employed" and did not suffer a monetary loss.

The Organization has contended that: "Carrier abolished 2 ton truck #01771 on Gang 8911 but one (sic) still using truck with 650 gallon fuel tank, fueling machines and putting up flags." In other words, the Organization seems to allege that, subsequent to abolishing Claimant's position, the Carrier utilized the 2-Ton Plus Truck on the same gang, without its having been re-advertised. However, the record clearly shows that the 2-Ton Plus Truck at issue was assigned to Gang 8980 and further that the Gang 8980 Truck Driver position was rebulletined on September 2, 1993. Mr. Geis was assigned to the truck effective September 9, 1993, and the truck and driver was transported to Smithville, Texas. So far as the record shows, that Gang 8980 and that truck were not working through September 15, 1993 as alleged by the claim.

This Board has consistently held that the party who alleges a violation of the Agreement must show proof of the claim and prove a definite violation of the Agreement. In all of the circumstances presented, the Organization did not shoulder its burden of proving when, or even if, a junior employee did indeed operate Truck No. 01771 in the vicinity of Moran, Kansas, subsequent to the abolishment of Claimant's position on August 17, 1993. Based on the foregoing, this claim must be dismissed.

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 21st day of April 1999.