

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33325
Docket No. MW-32297
99-3-95-3-127**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company (former
(Detroit, Toledo and Ironton Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Patrolman F. A. Phillips to perform trackman’s duties (removing ice and snow) in and around the Flat Rock Yards, Flat Rock, Michigan on January 6 and 7, 1994, instead of assigning Trackman R. C. McFann to perform said work (Carrier’s File 8365-1-462 DTI).**
- (2) As a consequence of the violation referred to in Part (1) above, Trackman R. C. McFann shall be allowed seven and one-half (7.5) hours’ pay at his time and one-half rate and seven and one-half (7.5) hours’ pay at his double time rate.”**

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 January 6, 1994, Claimant was performing his duties of Trackman-Truck Driver assigned the removal of ice and snow at Flat Rock, Michigan. At the end of the shift, he was released during what were severe weather conditions and returned home. He laid off on January 7, 1994 due to asserted weather conditions. Although the Claimant was released, the Carrier assigned Track Patrolman F. A. Phillips to continue the removal of ice and snow between the hours of 4:30 P.M. and midnight on January 6 and 7, 1994.

The Organization argues that the Carrier violated the Agreement, particularly Rule 22-(G), which obligated the Carrier to utilize the Claimant because it was continuous to his daily assignment and the work he had been performing on that day. It argues that the Carrier ignored Claimant's seniority rights as protected in Rules 7, 8, 9 and 26 in particular due to the fact that seniority is established by class and craft (Rule 8-(D)). The Organization maintains that the Claimant held appropriate seniority as a Trackman-Truck Driver, while Phillips was performing the duties of Track Patrolman and could therefore not be utilized as herein occurred.

The Carrier maintains that it operated in full compliance with the Rules of the Agreement. Although Phillips' regular position was Track Patrolman, it argued that he worked as Trackman-Truck Driver on January 6 and 7, 1994 due to the severe weather conditions. Accordingly, since Phillips held an October 9, 1978 seniority date and Claimant McFann a September 26, 1988 seniority date, it upheld seniority. The Carrier argues that overtime does not extend to certain positions or equipment and particularly under emergency conditions. It maintains that Claimant was not entitled to the work and did not report to work on January 7, 1994.

In this case, the Board reviewed all Rules including Rule 24 on Assignment to Higher or Lower Rated Positions. What is on point is Rule 22-(G) which states:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee. If practicable, preference for overtime work will be give to qualified and available employees in the

order of their seniority on the gang on which they work. In emergencies, the first available employees may be called.”

Rule 22-(G) is clear and requires under these instant circumstances that the Claimant be provided the overtime work. While the Carrier asserts that Track Patrolman Phillips worked that day as a Trackman-Truck Driver, the record evidence does not support that conclusion. The record contains evidence including a hand written letter from Track Patrolman Phillips stating:

“I did perform my normal duties on January 6, 1994 of track patrolman driving the vehicle #2030A until 4:30 P.M. At that time I was instructed by my supervisor, G. Snocker to drive the section III truck to which R. McFann was driving. I continued to operate this truck all night through the next day in removing ice and snow....”

Phillips was not working as a Trackman-Truck Driver on the date in dispute. Claimant was working his regular position assigned duties of removing ice and snow in and around Flat Rock Yard. Rule 22-(G) gives preference to overtime “in the order of their seniority on the gang on which they work.” This is not a case where the Carrier utilized the first available employee because the Claimant was available, qualified, had been performing the work and was denied his seniority rights. Neither is this a case where Phillips had seniority rights because he was not the senior man in the “gang on which they work.” Phillips was not working the section III truck, but as a Patrolman with vehicle #2030A. The Organization rightly pointed out that within the Track Department there are different Rules applicable to the group or classes enumerated. Track Patrolmen and Trackman-Truck Drivers are distinct and separate classes with different seniority rosters.

The Carrier violated the Agreement when it failed to permit the Claimant who was already performing the work to continue to perform the ice and snow removal. The Carrier violated the Agreement by thereafter assigning work the Claimant was currently performing to Phillips who did not have seniority to perform the said work in these instant circumstances. Certainly, under other conditions of emergency the Carrier could have utilized the first available employees, but here, the first available and proper employee “if practicable” on the gang, under the Rule was bypassed. Accordingly, the Carrier violated the Agreement and the claim is sustained.

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 17th day of May 1999.