

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33637
Docket No. MW-32410
99-3-95-3-289**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak -
(Northeast Corridor)

STATEMENT OF CLAIM:

"Claim of the system Committee of the Brotherhood that:

- (1) The Agreement was violated when, on March 7, 1994, the Carrier improperly established and advertised a truck driver position (Hi-rail Bridge Inspection Vehicle-- Bridge Inspection Vehicle Y-902) under the provisions of 'Rule' 89, with variable headquarters and to be deployed on all of Amtrak's northeastern properties (System File NEC-BMWE-SD-3389 AMT).**
- (2) As a consequence of the above-stated violation:**
 - (a) the Carrier shall abolish or rescind the advertisement or position in question,**
 - (b) future bucket truck positions shall be posted in the appropriate seniority districts with awards and displacements governed by the appropriate rosters on those districts,**
 - (c) the seniority of the employees awarded the positions advertised on March 7, 1994 shall not be shown on a Rule 89 roster but instead their seniority shall be dovetailed into the applicable Southern District rosters,**
 - (d) the senior furloughed EWE-A on the Southern district roster shall be compensated for all hours worked by the new**

Rule 89 EWE-A position during the period of the violation or in the event there is no senior furloughed EWE-A, the senior EWE-A on the Southern District shall be compensated for all hours worked by the new Rule 89 incumbent EWE-A positions, and

(e) the senior furloughed truck driver on the Southern district roster shall be compensated for all hours worked by the new Rule 89 truck driver position during the period of the violation or in the event there is no senior furloughed truck driver, the senior truck driver on the Southern District shall be compensated for all hours worked by the new Rule 89 incumbent truck driver on the bucket truck during the period of the violation."

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.

During the summer of 1993, Amtrak secured a new bridge inspection vehicle to assist with inspecting bridges. The vehicle is 47 feet long and weighs 60,000 pounds. It is a hi-rail overhead/underbridge inspection vehicle with four interconnecting booms. Amtrak engineers designed the vehicle so that employees and their tools could be moved in buckets 33 feet horizontally under bridges or 35 feet vertically downward. This allows employees to inspect difficult to reach bridges and supports, with minimum disruption to train traffic. Before this vehicle was obtained, these bridges were inspected visually. The vehicle took three years to design, plan and manufacture and cost over \$600,000.

On March 7, 1994, Amtrak posted an advertisement for the position of Truck Driver for the hi-rail bridge inspection vehicle. The position was advertised in accordance with Rule 89 of the Agreement with the Organization. Rule 89 allows Amtrak to establish units that may operate over its Northeast territory without a fixed headquarters. Each of these so-called "Northeast Units" is considered a separate seniority district and may operate over seniority districts throughout Amtrak's Northeast territory.

The Organization protested the March 7, 1994, advertisement. In the Organization's view, the hi-rail overhead/underbridge inspection vehicle did not meet the requirements of Rule 89. The Organization maintains that this unit was not the type of equipment that was contemplated by Rule 89. Rather, it was merely a boom truck with bucket and hi-rail attachments. The Organization maintains that positions operating boom trucks are not subject to Rule 89.

This Board respectfully disagrees with the Organization's characterization of the equipment in question as a "glorified boom truck." In our view, this bridge inspection vehicle was an entirely new, specially designed and unique piece of equipment. It came within the rubric of "other high technology machines not on the property as of June 27, 1993." As such, Amtrak had the right to establish this new equipment as a Northeast Unit under Rule 89. The Organization's claim is denied as a result.

AWARD

Claim denied.

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 16th day of November 1999.