

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35807
Docket No. MW-32852
01-3-96-3-189**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to provide Vehicle Operator R. Bowser the means with which to weigh the truck he was assigned to operate in the vicinity of Perry, Ohio on October 18, 1994, which resulted in his having to pay a three hundred forty-seven dollar (\$347.00) fine to the State of Ohio (System Docket MW-3840).
2. As a consequence of the aforesaid violation, Vehicle Operator R. Bowser shall be reimbursed the three hundred forty-seven dollars (\$347.00)”

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 October 18, 1994, the Claimant received a \$347.00 citation from the State of Ohio, because the Carrier's vehicle which he was operating was overweight. This claim seeks reimbursement from the Carrier for that fine, which the Claimant paid using his personal credit card.

For reasons set forth in Third Division Award 35806, the claim is denied.

Rule 3250 provides:

"Drivers must obey the motor vehicle laws and be properly licensed. Except for unusual circumstances, it is the driver's responsibility to pay all fines, penalties or charges which may be assessed against them for failure to comply with regulations."

As in Third Division Award 35806, Rule 3250 governs this dispute.

The record here does not show that the Claimant was ordered to take an overweight load. As the Organization states on the property, a Carrier Foreman may have "advised the claimant that he could still fit two more pallets onto the vehicle without being overloaded," but "... claimant denied the carrier official request stating, I would rather be under than close, and did not load the final pallets." The fact that the Claimant declined to take more pallets shows, as in Third Division Award 35806 that "... claimant was not without control of the events." Further, as in Third Division Award 35806, the Claimant could have had his vehicle weighed at a scale at the Carrier's expense.

What this case boils down to is that the Claimant miscalculated his load as being permissible under Ohio law. However, Rule 3250 clearly places the consequences of that miscalculation on the Claimant. The result may seem unfair. However, the Rule is clear and the Claimant had options to avoid the fine.

Based on the above, the claim is denied.

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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 14th day of November, 2001.