

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35810
Docket No. MW-32922
01-3-96-3-289**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned Cleveland District employee D. L. Arner to operate a track stabilizer machine between West Yard and Brier Hill Shop on the Youngstown Seniority District on February 4, 1994, instead of calling and assigning furloughed Youngstown Seniority District Machine Operator O. Jarrell to perform said work (System Docket MW-3756).**
- 2. As a consequence of the aforesaid violation, Mr. O. Jarrell shall be allowed eight (8) hours' pay at the Class 1 Machine Operator's straight 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.

At the relevant time, the Claimant was a Class One Machine Operator on the Youngstown Seniority District. D. L. Arner held the same position on the Cleveland Seniority District. On February 4, 1994, the Claimant was in furlough status.

On February 3, 1994, Arner moved a track stabilizer machine from Erie, Pennsylvania, to Ashtabula West Yard. That movement was within Arner's Cleveland Seniority District. On February 4, 1994, Arner moved the track stabilizer between West Yard and Brier Hill Shop where it was to be repaired. The February 4, 1994 movement was on trackage located within the Youngstown Seniority District.

This claim seeks eight hours for the Claimant on account of not being called to perform the transporting of the track stabilizer on February 4, 1994 on the trackage in the Youngstown Seniority District.

The claim has merit.

Arner's operation of the track stabilizer on February 3, 1994 from Erie to West Yard was appropriate because that work was performed in his Cleveland Seniority District. However, the work performed on February 4, 1994 from West Yard to Brier Shop was in the Youngstown Seniority District - a district where Arner did not hold seniority, but the Claimant did. In the past similar disputes have been sustained. See Third Division Awards 31828, 32440, 33631. Of particular note is Third Division Award 33631 quoting Third Division Award 29381:

"... The rational[e] behind these decisions is that bringing employees from one district to work in another district deprives employees with seniority rights in the district where the work is performed of contractually secured work opportunities. If Carrier is permitted to move employees from one district to another, without payment to employees deprived of the work opportunity, the seniority provisions, mutually developed by the parties and written into their Agreement, is violated."

The Carrier's arguments do not change the result.

First, the fact that Arner transported the machine into the Youngstown Seniority District and did not use the machine in that district does not change the result. The "work" performed was the transporting of the machine. Second, the fact that the Carrier may have been able to move the machine by other means (relying upon Third Division Award 30913 - an outside contractor dispute finding that transportation of equipment is not customary to the Maintenance of Way employees) also does not change the result. When the Carrier opted to use covered employees to perform the work, the seniority provisions of the Agreement came into play and the question now is whether an employee holding no seniority in the district where the work is performed could perform that work. Here, that question is resolved against the Carrier. Third, nor do we find that the Organization improperly amended the claim. This was clearly a work assignment/seniority district dispute - a theory made known to the Carrier from the inception. Finally, the Carrier's general assertion that "[a]s has been the longstanding practice, a Cleveland District operator was assigned to move the unit from Ashtabula to its 'home district' location, Brier Hill" has not been supported by facts to change the result.

Based on the above, the claim is sustained. The Claimant shall be made whole.

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 14th day of November, 2001.