Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35812
Docket No. MW-32993
01-3-96-3-378

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

(Brotherhood of Maintenance of Way Employes
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 Welder Helper D. Grow to operate Spiker #SM3026 on the Indianapolis Division on December 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1993, instead of recalling and assigning furloughed Machine Operator M. Hobbs to perform said work (System Docket MW-3449).

2. As a consequence of the violation referred to in Part (1) above, Claimant M. Hobbs shall be allowed eighty (80) hours' pay at the spiker operator's straight time rate and five (5) hours' pay at the spiker operator's time and one-half rate with ten (10) days' credit for all applicable benefits, vacations, sub-pay, R.R.B., etc."

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 furloughed Class 2 Machine Operator on the Indianapolis Division, Columbus Seniority District. The Organization asserts that on ten days in December 1993, D. Grow, a Welder Helper junior to the Claimant in the Machine Operator class, operated Spiker No. SM3026 while the Claimant was on furlough. The Carrier asserts that Grow operated the Spiker on eight days, and of those eight days only operated the Spiker long enough on three days for the Carrier to pay the rate.

Notwithstanding the contradiction over how often and how much Grow operated the Spiker, in accord with the statements submitted on the property in support the Organization's position, we will assume that, as the Organization argues, the junior employee Grow operated the Spiker for ten days in December 1993 while the Claimant was on furlough. That is not enough to sustain this claim.

The Organization relies upon the seniority and assignment provisions found in Rules 1, 3 and 4. The Carrier focuses on the Scope Rule and Rule 19.

The Scope Rule and Rule 19 provide:

"SCOPE

* * *

The listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement.

* * *

RULE 19 - ASSIGNMENT TO HIGHER OR LOWER RATED POSITIONS

An employee may be temporarily assigned to different classes of work within the range of his ability. In filling the position which pays a higher rate, he shall receive such rate for the time thus employed, except, if assigned for more than four (4) hours, he shall receive the higher rate for the entire tour. If assigned to a lower rated position, he will be paid the rate of his regular position."

This is not a dispute of first impression between the parties. The Carrier's position that it can temporarily assign employees under the Scope Rule and Rule 19 for work of short duration like the amount of work involved in this case has been previously upheld. See e.g., Third Division Award 29956 where the Organization argued that furloughed Trackmen should have been recalled to perform Trackmen work which was assigned to Machine Operators on 17 days in January 1990. The Board denied the claim citing the above quoted provisions of the Scope Rule and Rule 19:

"The Organization contends that the Claimants, who were furloughed Trackmen, should have been recalled from furlough to perform the work. The Carrier contends that it has the right under the Agreement to temporarily assign employees to different classes of work.

* * *

In Third Division Award 29582, between the parties, the Board concluded that this Agreement language permitted the Carrier to temporarily assign work outside of current classifications. A similar conclusion was reached in Third Division Award 26761. . . .

* * *

We concur with these Awards, and observe that while the Carrier had the option of going to the furlough list for work of less then thirty days duration, it also clearly had the right under the Agreement to temporarily assign employees from other job classifications to do the work. . . ."

See also, Third Division Awards 29958, 29960, 30640 with the same result.

These Awards between the parties are not palpably in error. For purposes of stability, we are required to defer to their result. This claim shall therefore be denied.

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.