

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36159
Docket No. MW-35775
02-3-99-3-756**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to bulletin a Group 28, Class (e) Sectionman Truck Operator position in connection with the operation of Truck MW1915-69593 at American Falls, Idaho beginning June 2, 1998 and continuing (System File J-9820-55/1154822).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall bulletin a Group 28, Class (e) Sectionman Truck Operator position for the operation of Truck, MW 1915-69593 at American Falls, Idaho and Claimant D. J. Feige shall now be compensated ‘ . . . at thirty-one cents (\$.31) per mile for each of the extra fifteen (15) miles driven each work day since June 2, 1998, continuing until Sectionman Truck Operator position is correctly assigned by bulletin. ****”

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.

The Organization contends in this case that the Carrier utilized a truck with a gross vehicle weight of 15,000 pounds on a daily basis at American Falls, Idaho, yet did not bulletin a Sectionman Truck Operator position at that location. As a result, the Organization argues, the Claimant was required to accept employment as a Sectionman Truck Driver at Bancroft, Idaho, a position which required her to travel an additional 30 miles to and from her home in Pocatello, Idaho.

The Organization relies on Rule 20, which states:

"RULE 20 BULLETINING POSITIONS – VACANCIES

All new positions or vacancies that are to be filled, including temporary vacancies of thirty (30) calendar days or more duration, created by a medical leave of absence of the regular occupant of a position and temporary positions connected thereto, shall be bulletined to all employees holding seniority on the district in the class in which the new position is created or vacancy occurs.

New positions shall be bulletined as much in advance of their establishment as possible but in no event later than seven (7) calendar days after they are established.

Vacancies, including temporary vacancies as defined above, shall be bulletined as promptly as possible but in no event later than seven (7) days after they occur; provided, however, that temporary vacancies, which start out on an indefinite basis, will be bulletined as soon as it is known they will exist for thirty (30) calendar days or more."

In addition, the Organization contends that the parties' "New Truck Driver Agreement," effective August 16, 1993 is applicable in pertinent part as follows:

"Effective 8-16-93 operators of truck with a gross vehicle weight (GVW) of 10,000 pounds or more in the Maintenance of Way Department will be

controlled by new Agreement provisions. Adjustments and additions to various groups and classes involve the following truck operator positions:

Sectionman Truck Driver . . . ”

The Carrier denied the claim on two grounds. First, it argued that the truck at American Falls was utilized fewer than 15 hours per week. Second, it asserted that the vehicle at issue was a pick-up truck. The Carrier argued that there was no provision in the August 1993 Agreement for Sectionman Truck Drivers to be bulletined for the operation of pick-up trucks.

After careful review, the Board finds that the Carrier's defenses are without merit. The Organization submitted a statement from American Falls Section Foreman G. L. Purkey stating that the truck in question was operated 40 hours a week plus overtime. The Carrier's failure to deny or refute that statement is fatal to its unsupported claim that the truck was used on a part-time basis.

Moreover, there is no Agreement support for the Carrier's contention that pick-up trucks are excluded from the definition of "trucks" as used in the parties' August 1993 Agreement. Sectionman Truck Driver positions are to be bulletined for the operation of trucks which have a gross vehicle weight in excess of 10,000 pounds. Under the Agreement language, there is a differentiation between vehicles based on weight and not the type of vehicle. In a case involving similar facts, the Board in Public Law Board No. 6302, Award 16 correctly noted: "The express language of the Agreement strongly supports the Organization's position that the dividing line between Sectionman Truck Operator positions and Sectionman positions is the vehicle's gross vehicle weight and not whether the vehicle is a pickup truck."

We conclude that the Organization's claim is meritorious. A Sectionman Truck Driver vacancy existed at American Falls, Idaho, and the Carrier failed to bulletin the vacancy in accordance with the Agreement. The only remaining question is one of remedy. Item two of the Statement of Claim requests that the Sectionman Truck Operator position be bulletined and that the Claimant be awarded compensation for the extra mileage she incurred driving to and from a more distant Carrier location. The Organization maintains that, absent any challenge on the property by the Carrier to the remedy sought, the claim must be sustained.

Generally, the Organization is correct that, in rendering its decision, the Board is confined to the arguments and evidence submitted on the property. However, there is an overriding principle to be considered. Injunctive relief is beyond the authority of the Board, as numerous precedent Awards have recognized. See Third Division Awards 13615, 29695, 30413, 31216, 32939 and Second Division Awards 12597, 13008. We would exceed our remedial power by directing the Carrier to bulletin the Sectionman Truck Driver position. If the Board does not have the power to award that injunctive relief, then the lack of authority cannot be overcome, regardless of when the issue was raised.

The request for mileage is equally problematic. There is no indication that the Claimant suffered a loss of earnings as a result of the Carrier's contract violation. The Claimant's travel from her residence to her job reporting location is not compensable under any of the cited Agreement provisions. Therefore, we find that there is no basis in the Agreement for the relief that is requested.

For all the reasons stated above, Item one of the Statement of Claim is sustained; Item two is denied.

AWARD

Claim sustained in accordance with the Findings.

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 20th day of August 2002.