

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37620
Docket No. MW-36663
05-3-01-3-204

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CP Rail System (former Delaware and
(Hudson Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign System Equipment Operator (SEO) D. Jordan to perform SEO service (operate truck and trailer to haul equipment) on April 13 and 14, 2000 and instead called and assigned junior employe J. Jackson (Carrier's File 8-000147 DHR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Jordan shall now be compensated for all straight time hours worked by Mr. J. Jackson on April 13 and 14, 2000 at the applicable SEO straight time rate of pay and for all overtime hours worked by Mr. Jackson on the aforesaid dates at the applicable time and one-half rate of pay.”

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 time of the incident in question, Claimant D. Jordan held seniority as a System Equipment Operator (SEO) in the Track Department. J. Jackson holds seniority in various classes; however, he did not hold SEO seniority on the dates involved here.

On April 13 and 14, 2000, the Carrier required the services of an SEO to operate a truck and trailer to transport B&B equipment between work points in Saratoga and Albany Counties. Jackson performed said work on the dates at issue. The Carrier contends that Jackson expended less than two hours on each of the two days and as such, the task was incidental to the work Jackson performed at the job site.

The Organization takes the position that the Carrier violated Rules 1, 3, 4 and 28 of the Agreement when it assigned a junior employee to perform SEO services on April 13 and 14, 2000. According to the Organization's position, Jackson performed SEO Truck Driver work for two full days and, therefore, that work was not merely incidental for those two days. The Organization further contends that the Carrier violated the Agreement when it assigned work belonging to an SEO Truck and Trailer Operator to an employee who held no seniority in that class.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that under Rules 17.1 and 17.2, it had the right to assign the junior employee to the SEO work on a temporary basis. According to the Carrier, under Rule 17 of the Agreement, such a temporary assignment is allowed. Further, the Carrier maintains that the Claimant was fully employed on April 13 and 14, 2000, and therefore was not harmed in any way and is entitled to no remedy.

Rules 17.1 and 17.2 specify:

"Rule 17.1

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. If assigned to a lower rated position, he will be paid the rate of his regular position.

Rule 17.2

. . . Where a BMW employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work"... of another classification within the BMW, such employee or employees may be required, so far as capable, to perform such incidental work provided it does not comprise a preponderant part of the total work involved in the assignment. . . ."

According to the Carrier, Jackson was temporarily assigned to drive the truck and trailer for a period of two hours or less on April 13 and 14, 2000. The Carrier maintains that the hauling of equipment to the work site on was incidental to Jackson's main work assignment on both days. The Carrier maintains that Jackson spent two hours or less each day driving the truck and trailer. Thus, the Carrier contends that the claim should be denied.

After a review of the evidence, the Board finds that the Organization has not been able to sustain its burden of proof in this matter. There is insufficient evidence in the record to demonstrate that Jackson was assigned more than an incidental amount of SEO.

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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 19th day of October 2005.