

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37691
Docket No. MW-37601
06-3-02-3-700**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) –
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier abolished the truck driver position on Gang Y-262 held by Mr. D. Battista on February 4, 2000 and thereafter utilized Mr. A. Wetherell to perform the truck driver duties on said gang through October 10, 2000 (System File NEC-BMWE-SD-4143 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Battista shall now be compensated for six hundred twenty-eight (628) hours' pay at his respective time and one-half 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.

This claim arises from the Carrier's abolishment of the position of Truck Driver on Gang Y-262 held by the Claimant, effective February 4, 2000 and its assignment of the duties associated with that position to the gang Foreman. It seeks payment for the overtime worked by that gang subsequent to the Claimant's being forced to displace onto a less desirable Truck Driver position.

The Organization asserts that the Claimant performed all of the duties associated with operating the gang's van, including transporting the gang to and from the work site, maintaining the van and running errands as needed. It contends that the work remained and the Carrier's decision to abolish the position and reassign its duties violates both the Classification of Work Rule and Rule 55, Preference for Overtime. A written statement from the gang Foreman verifies that he and other gang members drove the van to transport the gang to the job site after the position of Truck Driver was abolished. The Organization relies upon Third Division Awards 3686, 10378 and 15521 in requesting that the Claimant be compensated at the overtime rate for his missed overtime opportunities associated with Gang Y-262.

The Carrier argues that it exercised its managerial right to abolish the Truck Driver position on Gang Y-262 which was no longer needed pursuant to Rule 23, Force Reduction-Advance Notice, with which it complied, relying on Third Division Awards 20726 and 29044. It notes that driving Carrier vehicles is not specifically reserved to employees in the Truck Driver classification either by Agreement or practice, citing Third Division Awards 26236, 28263, 31254 and Public Law Board No. 4259, Award 5. The Carrier contends that the Organization's failure to show that any position in Gang Y-262 performed Van Driver duties for a majority of their tour during the claim period, rather than de minimus work incidental to their primary function, supports the conclusion that it failed to satisfy its burden of proof, relying on Third Division Award 35862. Finally, the Carrier asserts that the remedy requested by the Organization is excessive because there was no showing that the services of a Van Driver were needed on any of the days that Gang Y-262 may have worked overtime during the claim period, and the Organization continues to improperly request payment at the punitive rate when it is clear that straight time is the appropriate rate for a missed work opportunity on this property, citing Third Division Awards 30686 and 31129.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of either the Classification of Work Rule or

Rule 55 of the Agreement. The Truck Driver position description makes clear that the duties "consist exclusively" of the operation of highway or hi-rail vehicles. So long as the Carrier did not have an employee perform the duties of a Truck Driver on Gang Y-262 as a fundamental and core part of his job after the abolishment of the Claimant's position, its determination that the services of a Truck Driver on that gang were no longer needed and the exercise of its discretion to abolish the position and assign the Foreman and other gang members the incidental use of the van as part of their duties is neither arbitrary nor violative of the Agreement. See Third Division Award 20726. The Organization did not establish that the Foreman performed all of the duties previously done by the Claimant, but, rather, that the driving of the crew to and from the work site was assigned to various members of the gang as an incidental part of their functions. From these facts the Board is unable to conclude that the Claimant's position was improperly abolished or that the Carrier violated Rule 55 when it failed to include the Claimant in the overtime worked by Gang Y-262 to which he no longer belonged. Accordingly, the claim is 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 30th day of January 2006.