

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39859
Docket No. MW-38364
09-3-NRAB-00003-040314
(04-3-314)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Foreman R. Ruhd to perform truck driver service (operate section truck) on August 1, 2, 3, 6 and 7, 2001 instead of regularly assigned Truck Driver R. Neuleib. [System File B-M-918-W/11-02-0009 BNR].**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant R. Neuleib shall now “. . . be paid forty (40) hours at the truck driver’s straight time rate of pay and twenty (20) hours at the truck driver’s overtime 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.

The Claimant is a Truck Driver assigned to the Track Sub-Department. The Organization claims that Rules 2, 5 and 55 clearly reserve the work involved to Track Sub-Department employees. Specifically, Rule 2A specifies seniority is entitled to consideration for positions and Rule 2B provides that seniority is confined to a sub-department where the employee is employed. Additionally, Rule 5 specifies separate seniority rosters, sub-departments and ranks for Track and Work Equipment Sub-Department employees. Rule 55 is the classification of work Rule and operates as a reservation of work Rule. Rule 55B defines the job of Foreman and Rule 55P defines the job of Truck Driver. Because Rule 55P reserves the work to Carrier Truck Drivers, exclusivity need not be established. The Carrier violated the Agreement when it removed the Claimant from the Truck Driver position and replaced him with a Foreman. The Claimant's position was not blanked; it was filled by a Foreman.

The Carrier counters that the Agreement was not violated because driving a truck was incidental to the Foreman's position. There was a substantial amount of work being done in the area – a region/system tie gang was scheduled to begin work in the area and a signal crossover was also scheduled concurrently. Ties had to be delivered and numerous crossover joints had to be cut for the crossover. Here, the Foreman is a working Foreman, who possesses all the necessary certifications and qualifications for driving a truck. Driving the truck was incidental to his position as Foreman. The Truck Driver was delivering ties during this period. Because Rule 55 is not a reservation of work Rule, the Organization must establish exclusivity to the work. The Organization cannot show that the work was exclusively that of Truck Drivers and the claim should be denied.

The Board carefully reviewed the evidence. Rule 55P provides:

Truck Driver:

“An employee assigned to primary duties of operating dump trucks, stake trucks and school bus type busses, except trucks having a gross vehicle weight of less than 6,000 lbs. or any vehicle of the pick-up, panel or delivery or special body type. The term special body refers to trucks such as those used by welder gangs and equipment maintainers with special bodies designed to transport mechanics, tools, equipment and supplies. When vehicles equipped with snowblades are used for plowing snow or moving dirt, the truck driver rate will apply in accordance with Rule 44. Truck Driver will perform such other work as may be assigned to him when not engaged in driving a truck.”

There is precedent between the parties that Rule 55 - Classification of Work does not reserve work to a specific class or serve as a Scope Rule. Rule 55P does not reserve truck driving to a certain class of employees. See e.g., Third Division Award 33938 and the citations therein.

There is no Rule that establishes that truck driving is reserved only to the Claimant's class of employees. The evidence suggests to the contrary – that truck driving is performed by people other than Truck Drivers when needed. Support is found in, for example, Third Division Award 34013 regarding whether members of welding crews could be required to maintain CDL and DOT certifications.

In this matter, the Carrier maintained that the Foreman's driving of the truck was incidental to his work as a Foreman during the project. Such incidental driving may be done by non-truck drivers.

The claim made by the Organization is an intra-craft dispute. The precedent is clear that in that type of dispute, the Organization must meet a high standard – the Organization must show that Truck Drivers have performed the work of truck

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driving on an exclusive basis. The Organization has not met that burden in this claim.

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 31st day of July 2009.