

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

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 Truck Driver W. Oyloe to fill a truck driver vacancy at Plentywood, Montana on March 3 through March 10, 2003 and instead assigned Foreman K. Fishell (System File B-M-1110-W/11-03-0182 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Oyloe shall now ‘ . . . be paid eight (8) hours at the truck driver’s straight time rate of pay for each claimed day and that he receive overtime pay for any overtime worked by the foreman during the claim period.’”**

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 facts giving rise to the instant matter are undisputed. A Truck Driver on the Carrier's Plentywood section was assigned to train an employee who had been assigned to the position of Truck Crane Operator. The training assignment was less than 30 days. The Roadmaster assigned the Section Foreman to drive the section truck during the period of March 3 through March 10, 2003.

In a letter dated April 16, 2003, the Organization filed a claim that provided, in pertinent part:

"Claimant possesses District 200 truck driver seniority of 5-18-93. On claimed dates, foreman Kelly Fishell was directed by the Carrier to operate the boom truck at Plentywood, MT and did this work to the exclusion of a truck driver. The truck driver who had been operating the truck, Dale Hansen, was instructed to work with the Truck Crane and instruct the new operator. The Carrier does not have the right to force a Foreman to perform the work of a truck driver when they send the assigned truck driver to perform other duties. . .

The work of a foreman is clear and unambiguous, when it states that Foreman's work is to direct the work of men and reporting to officials of the railroad. It is not to do the work of a truck driver.

The Claimant has lost work opportunity, due to the Carrier's failure to comply with the Agreement and by the Carrier directing the foreman to perform the work of a truck driver."

In a letter dated June 4, 2003, the Carrier stated, in part:

"First, Carrier takes exception to your claim filing for Claimant Oyloe. Carrier records indicate Mr. Oyloe was displaced from a position and in a 'bump to place' status, therefore would not be eligible for work and is therefore an improper claimant.

Our investigation into the alleged violation finds the Organization failing to prove the position of truck driver being worked by the Foreman and for the specified hours being claimed. Foremen are required to be DOT qualified and may operate trucks, if necessary, and you have not proved otherwise.”

The Organization appealed the decision of the Carrier in a letter dated July 23, 2003, and attached a statement from the Foreman who was instructed to fill the vacancy. Foreman Fishell wrote:

“On the dates of March 3, 2003 thru March 7, 2003, L. K. Fishell was instructed to drive [the] Plentywood Section Truck. L. K. Fishell was told there was no Truck Driver available from B. M. Klein, Roadmaster.

**L. K. Fishell
7/8/03”**

The Carrier replied in a letter dated November 3, 2003. The Carrier’s position was that the truck driving was incidental to the Foreman’s duties. Additionally, the Carrier stated “[t]he Organization further argues that the Carrier failed to comply with procedures for filling temporary vacancies under Rule 19A. This is not true; there were no 19A requests on file.”

In a letter dated May 4, 2004, the Organization discussed the conference wherein the parties restated their positions. The Organization referenced the Carrier’s Rule 19A defense and the Carrier’s right to leave positions vacant for less than 30 days. Rule 19. TEMPORARY VACANCIES AND VACATION RELIEF NOT BULLETINED reads, in relevant part, as follows:

“A. A new position or vacancy of thirty (30) calendar days or less duration, shall be considered temporary and may be filled without bulletining.

*** * ***

If such vacancy is on any other position and is filled, preference will be given to the senior qualified employee who has on file a written request to fill such vacancy. Such employee will assume all the working conditions of the assignment just as if regularly assigned thereto. Written requests for vacancies under this rule must be on file with the designated Carrier Officer by 12:00 Noon local time the day before the vacancy begins.”

The Organization and the Carrier submitted lengthy arguments and multi-faceted analysis of the merits of the instant claim. The Board carefully reviewed the record evidence. The position at issue here was a temporary vacancy while the assigned Truck Driver was training another employee. Rule 19A applies. The Carrier asserted that there were no Rule 19A requests on file and there is nothing in the record to contradict that assertion. Accordingly, the claim has not met the predicate requirement of Rule 19A. Accordingly, it 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 September 2009.