

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40993
Docket No. MW-41304
11-3-NRAB-00003-100165**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier abolished the truck operator position (operating Truck #66748) held by Mr. D. Roach on December 21, 2008 and then assigned Mr. A. Patrick to operate said truck on December 22, 23, 26, 2008, January 3 through 11, 2009, January 29 and 30, 2009 and continuing (System File UPLW-402-09/1514627 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Roach shall now be compensated for eight (8) hours’ pay at the truck operator’s straight time rate of pay and at the applicable overtime rate of pay for all overtime hours that Mr. A. Patrick was assigned to the aforesaid truck operator position beginning December 22, 2008 and continuing and he shall be allowed the per diem in connection with such assignment.”**

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 relevant time, the Claimant was assigned to Gang No. 7853. In that position, the Claimant operated Grapple Truck No. 66748. On December 21, 2008, the Claimant's position was abolished, putting the Claimant into furlough status. Commencing on December 22, 2008, and intermittently on dates thereafter, Grapple Truck No. 66748 was operated by A. R. Patrick, a member of Gang No. 7969.

The Carrier has the managerial right to abolish positions. There is nothing in this record to suggest that the exercise of that right in abolishing the Claimant's position on Gang No. 7853 was accomplished in an arbitrary manner. The fact that the Grapple Truck which the Claimant formerly operated was utilized by the Carrier on an intermittent basis on another gang and operated by Patrick does not change the result. In addition to the Carrier's managerial right to abolish positions, the Carrier also has the managerial right to use its equipment as it deems appropriate.

The claim lacks merit and, therefore, must be 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 20th day of July 2011.