

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19292
Docket Number MW-19415

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when on April 10, 11, 13 and 14, 1970, it used employees outside the scope of the Carrier's Agreement with its Maintenance of Way employees to operate a bullgrader to clean off Track 57 in Radnor Yard at Nashville (System File 1-25/E-304011).

(2) Mr. H. E. Hardy be allowed eight (8) hours' pay at the bullgrader's time and one-half rate (April 11th) and twenty-four (24) hours' pay at the bullgrader's straight time rate (April 10, 13 and 14) because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: The record shows that at Carrier's Radnor Yard, Nashville, Tenn., track No. 57 is what is known as cleanout track, where shop craft employees clean cars by removing refuse and debris from the cars onto the ground. A bullgrader is kept at this location for the specific purpose of cleaning the walkways when the collection of debris becomes excessive. The Claimant is a machine operator assigned to the Nashville Terminal track gang. It is contended that the Agreement was violated on the dates involved because a shop craft employee was used to operate the bullgrader in cleaning the debris from the walkway.

In the handling of the dispute on the property the Carrier presented to the Organization a letter dated July 17, 1970, from the Division Engineer at Nashville, reading in part:

"Mr. Willis, Roadmaster, informed me that this has been the practice for many a year. The shop employees clean the cars by shoving and pushing all the trash and debris from the cars onto the ground. When the amount of trash becomes excessive in the walkways, Mr. Hardy is called. However, if he is not available the shop employees use the bull grader to clean the walkways. The bull grader is kept at this location just for this purpose. It is estimated that Mr. Hardy cleans the walkways about 50% of the time and the shop employees the remaining 50%."

The statement of the Division Engineer was not disputed by the Organization and we, therefore, must accept it as factual. In its submission the Carrier states that Claimant Hardy is assigned as Backhoe Operator in the Nashville Terminal Track Gang, and when available he is used to operate the Bullgrader as its usage dictates.

One of the days involved in the dispute, April 11, 1970, was Claimant Hardy's rest day. There is no showing in the record that he was not available for work on that day, and in view of the contention of the Carrier throughout the handling that Claimant was used to operate the Bullgrader when available, we will sustain the claim for that date only, but in view of the record as made on the property, we will deny the claim for all other dates.

This award is based upon the facts and record in this docket and is not to be used as a precedent in any other dispute.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in Opinion.

A W A R D

Claim sustained to extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.