

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20459
Docket Number MW-20491

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(J. F. Nash and R. C. Haldeman, Trustees of the
(Property of Lehigh Valley Railroad Company,
(Debtor

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted Foreman S. Frederick to perform the duties of the truck driver's position at Allentown from January 11 to February 18, 1972 (both dates inclusive) instead of recalling furloughed Truck Driver Ismael Rodriguez to fill said truck driver's position.

(2) The Carrier further violated the Agreement when it failed and refused to bulletin the vacancy in said truck driver's position which existed from January 11 to February 18, 1972 inclusive.

(3) Ismael Rodriguez be allowed eight (8) hours of pay for each work day within the period mentioned in Parts (1) and (2) hereof.

OPINION OF BOARD: This claim hinges on the meaning of a Memorandum of Agreement signed by the parties on October 29, 1947. The applicable language reads:

"3 - There shall be no change in the present practice of Foremen, Asst. Foremen or Mechanics, whose rate of pay is higher than the rates of pay agreed to in Item 1 above, continuing to operate M. or W auto trucks, track cars, snowplows and snow flangers, used by them in the performance of their work and, in such cases, new positions to perform such classification of work shall not be established."

The factual setting begins with Claimants' displacement from his truck driver position by a senior employee. He exercised his seniority to secure a position as track laborer. He was later displaced from that position and furloughed. The employee who had displaced him as a truck driver was reassigned and a foreman was assigned the duties of the truck driver position.

The employees believe that Carrier was required to advertise the position. Carrier's position is that section 3 of the Memorandum permits it to use foremen to operate trucks without limitation. The answer to the conflicting views is to be found in the language and the practice.

It is apparent that the particular position under consideration has not been occupied by a foreman as a matter of practice. Claimant, prior to his displacement, was regularly assigned to it. The applicable language in the Memorandum cannot be read as Carrier reads it. It does not mean that foremen can be used to fill any and all vacancies to operate trucks. The Agreement speaks of "continuing to operate M. of W auto trucks." The intent here is to continue what has gone before, not to have foremen operate any truck, but to have them to continue to operate as they have before. Carrier has shown no practice of having a foreman operate a truck at this location. The Agreement also refers to trucks "used by them in the performance of their work." This reference, too, makes it clear that the parties agreed to have foremen operate trucks as they had in the past, that is to operate in specific locations and assignments. No evidence of such practice has been shown here. Finally, the reference to establishing new positions makes it clear that what the parties intended to accomplish was to permit the continuance of past practice. By reasonable inference the language also means that a practice of not permitting foremen to operate trucks would also continue and that when a vacancy in an assignment which had been occupied by a truck driver existed it would be filled by the application of the terms of paragraph 4 of the Memorandum which reads, in pertinent part:

"4 - when new positions are created or when vacancies occur in the positions of M. of W. Auto Truck Driver, Track Car Driver, Weed Burner Operator, Snowplow and snow flanger operator and Mole ballast operator, they shall be advertised in accordance with Rule 3 of the current agreement, to all employees in the Track Sub-Department."

Carrier did not advertise the vacancy in the position of M. of W. Auto Truck Driver as required by the Agreement.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.