

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22547
Docket Number MW-22447

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 November 20 and 21, 1976, it used Track Repairman O. Sanders, Jr. to operate the truck assigned by bulletin to Truck Driver G. S. Coleman /System File 1-5(79)/E-265-11 E-265/.

(2) Truck Driver G. S. Coleman be allowed sixteen (16) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimant was a regularly assigned truck driver with Saturday and Sunday rest days. When Carrier required the use of a truck on a Saturday and Sunday in November, 1976, it used the services of a track repairman (Sanders) who normally worked on weekends to drive the truck that Claimant regularly drives. Claimant asserts a violation of Rule 30(g):

"30(g) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Carrier stresses that trucks are - in reality - tools, such as locomotives, IBM machines, etc., and it relies upon Awards 21441 and 21774 concerning disputes between these parties. The Claimants contend that the mentioned Awards are incorrect.

Award 21441 was concerned, to a significant extent, with a procedural question. But, it concluded, regarding Rule 30(g) among others - that the rule(s)..."simply do not support Petitioner's claim..." The claim had asserted a violation when a "...Truck Driver...was not called and used to drive the truck used by Assistant Roadmaster... to patrol track...on certain days."

Award 21744 was also concerned with the same procedural question, but it concluded that there was no violation, and the claim (Truck Driver not used to drive truck used by Assistant Roadmaster to patrol and inspect track) was dismissed "...since no other employe worked overtime or was called..."

We have considered the Awards cited by the Claimants - as they relate to precedent Awards on the same property concerning the same issue.

It is a well recognized principle of this Board that once an issue is decided between the parties, it should not be disturbed, absent a finding that the prior Award(s) is palpably erroneous. There is, of course, a sound basis for that doctrine as it tends to guarantee a basic predictability of labor relations between the parties. This doctrine applies even if a subsequent authority would have reached a different conclusion had it considered the matter in the first instance. This, of course, is a classic test of that principle and, regardless of our individual predilections we gather, from a close reading of the two prior Awards - and making some reasonable inferences - that the factual circumstances are similar. Here - as in Award 21744 - no one was "called in" or "worked overtime" in place of the Claimant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.