

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25460
Docket Number MW-25305

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Detroit, Toledo and Ironton Railroad Company

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

(1) The Agreement was violated when, during the period April 12 through May 21, 1982, both dates inclusive, the Carrier used an employe (Mechanic J. Hiberra) of the Grand Trunk Western Railroad Company to repair and maintain "tie machines" assigned to Extra Gang "A" (Carrier's File 8365-1-142).

(2) Because of the aforesaid violation, Mechanic-Truck Driver J. E. Wallace shall be allowed pay at the applicable mechanic truck driver's rate for all time expended by Mechanic J. Hiberra in performing the work referred to in Part (1) hereof.

OPINION OF BOARD: This dispute concerns the use of a Mechanic on equipment leased by the Carrier from April 12 through May 21, 1982. The leased equipment, a tie machine, was accompanied by a Mechanic from the Lessor Railroad. Also assigned to the machine was a Mechanic-Truck Driver, represented by the Organization. As to mechanical repair performed on the equipment during its period of lease, a statement in the record from the Carrier's Mechanic Truck Driver reads as follows:

"Repairs made on machines during the dates mentioned
...were done by both [a Mechanic employed by the lessor]
...and myself as a team."

The Organization argues that its Scope Rule, as well as applicable seniority rules, prohibit the use of an employe not holding seniority within the provisions of the Agreement between the parties. The Carrier replies that the Agreement does not prohibit the use of an employe specifically designated to accompany leased equipment.

The Organization claims that another employe, qualified as a Mechanic-Truck Driver, should be allowed pay "for all time expended" by the Lessor's Mechanic in performing repair and maintenance work on the tie machine.

The Board finds that both the Organization and the Carrier have painted the dispute with too broad a brush. As to the Carrier's position, the Board finds no support for its view that, simply because it has leased equipment, it is permitted without limit to utilize an outside employe on work which would otherwise be performed by its own employes. As to the Organization's view, significance must be given to the fact that the regularly assigned Mechanic-Truck Driver was utilized on the work here in dispute. The statement submitted by the Organization says that the two Mechanics worked "as a team". The Carrier states that its own Mechanic-Truck Driver simply worked "under the directions" of the Lessor's Mechanic. Aside from reference to working "as a team", the Organization offers no evidence as to actual work performed by the Lessor's Mechanic.

Under these circumstances, the Board need not resolve the broad contentions set forth by the Organization and the Carrier. The mere presence of the Lessor's Mechanic is not a rule violation. There is no dispute that the Carrier did assign its own Mechanic-Truck Driver to the work in question. The claim for pay on behalf of a second Mechanic-Truck Driver is speculative, since there is no demonstrative proof that the assigned Mechanic-Truck Driver did not perform the repair and maintenance work as assigned. Absent a showing that two Mechanics either were required or actually performed the work, there can be no finding in favor of the claim of a second employee.

This conclusion is reached, as noted above, without accepting the Carrier's general premise as to its right to utilize outside employees in any instance where equipment is leased.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.