

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26343
Docket Number MW-25848

Robert W. McAllister, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company (Southern Region)

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

1. The Carrier violated the Agreement when it used Conductor-Pilot Reed to perform trackman's work March 21 through March 25, 1983 and March 28, 1983 at Newport News Yard (System File C-TC-1760/MG-4011).

2. Because of the aforesaid violation, furloughed Trackman E. Desco shall be allowed forty-eight (48) hours of pay at the trackman's straight time rate."

OPINION OF BOARD: This Claim for 48 hours pay at the straight time rate for the Claimant is based upon the allegation that Conductor-Pilot Reed hooked rail tongs and performed other duties to assist a Burro Crane Operator March 21 through March 25 and also on March 28, 1983. Initially, the Carrier took position that any unplanned, incidental, unassigned and voluntary work constituted no Agreement violation. The Carrier subsequently characterized the Organization's claim as vague because there was no accompanying details of any asserted Trackman's work performed by Conductor-Pilot Reed other than "hooking rail tongs." The Carrier also contended that it was inconceivable that Reed could have hooked rail tongs for 48 hours. The Carrier, therefore, said the Claim was excessive. The on-the-property handling further revealed the Carrier took the position that machine operators frequently handle rail, scrap, and ties independently without assistance from other employees.

This Board finds the record establishes Conductor-Pilot Reed did perform Trackman's duties when he hooked rail tongs during the period in question.

In essence, the Carrier argues the Organization has failed to sustain its burden of proof because it did not indicate the amount of time Reed spent hooking the rail tongs and did not specify what "other duties" he allegedly performed. The record does not support a finding Reed performed any "other duties." However, as we have already indicated, it does establish Reed did hook rail tongs, and this finding is supported by the Carrier's own answers to the Organization's on-the-property assertions. The fact the Organization was unable to show how much of Reed's time was involved does not alter our holding. If, as the Carrier has asserted, such Burro Crane assignments did not contemplate nor anticipate any additional Maintenance of Way Labor, it has failed to explain why it was necessary for Conductor-Pilot Reed to assist the

Burro Crane Operator for six working days. It seems significant to this Board that the Carrier, in contending Burro Crane Operators are able to handle rail, scrap, and ties without assistance, qualified that assertion with the word "frequently." There is simply no evidence of record supporting the Claim the work performed by Reed was unnecessary. Accordingly, we will sustain the Organization's Claim the Agreement was violated by Reed performing Trackmen's duties. There is no support for the Claim Reed performed forty-eight (48) hours of such work. We will, therefore, sustain Part 2 of the Claim to the extent of two (2) hours for each day Conductor-Pilot Reed performed Trackmen's duties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

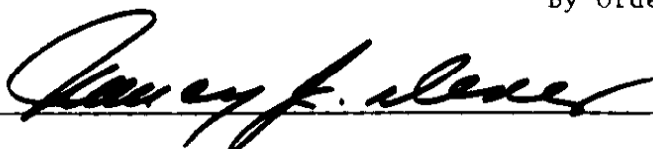
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.