

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26679
Docket Number MW-26360

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

1. The Carrier violated the Agreement when it assigned an employee junior to Mr. R. C. Decker to fill a temporary vacancy as vehicle operator in Gang 830 on November 22, 23, 24, 28, 29 and 30, December 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 24 and 25, 1983 (System Docket CR-621).

2. Because of the aforesaid violation, Mr. R. C. Decker shall be allowed the difference between what he should have been paid at the vehicle operator's rate and what he was paid at the trackman's rate for two hundred (200) hours."

OPINION OF BOARD: Petitioner alleges that Carrier improperly assigned a junior employee who holds no seniority as a vehicle operator to fill a temporary vehicle operator vacancy. The duties included operating a dump truck assigned to Gang 830 on a daily basis. It is alleged that the junior employee expended 200 man-hours in the performance of those activities. Carrier maintain first that the work in question did not constitute a temporary vacancy but was merely "casual." Furthermore, the junior employee only performed the activity for a total of seven days. In addition Carrier insists that the work in question was offered to Claimant and he refused it; this is denied by Claimant.

This Board has a restricted role in the resolution of disputes under the statute. That jurisdiction does not include the finding of facts, which are not clearly presented to it by the written record setting forth the handling on the property. Our role is essentially one dealing with the application of the Agreement, or interpretation of the Agreements, given a particular set of facts. In situations such as that in this matter, when the critical facts are disputed by the parties, we have no choice: we have no basis for resolving the dispute and must dismiss the Claim.

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

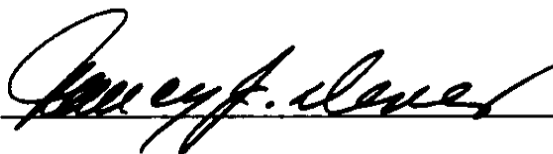
That the facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.