

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Agreement was violated when the Carrier assigned Foreman D. Maine instead of Truck Driver C. Townes to perform truck driving work on July 24, 25, 30, 31 and August 1, 1985 (System File NEC-BMWE-SD-1396).

(2) As a consequence of the aforesaid violation, Mr. C. Townes shall be allowed forty-three and one-half (43 1/2) hours of pay at his time and one-half rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

It is well established that the burden of proof is on the Organization to establish that the work in question was exclusively that of the Claimant. In this Claim, that burden has not been met.

On the dates claimed, a Foreman was assigned to an inventory project. In order to perform this work, he drove the Carrier vehicle to transport himself to the job site. It appears that he frequently drove Carrier vehicles.

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90-3-87-3-50


The Organization has failed to show either by specific language in the Agreement or by past practice that the work in question was exclusively performed by the Claimant.

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 28th day of February 1990.