

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier failed and refused to permit Mr. S. W. Cooley to fill the bus driver vacancy on Gang 822 beginning September 3, 1986 (System File M-492/870105).

(2) Mr. S. W. Cooley shall be compensated for all wage loss suffered as a consequence of the violation referred to in Part (1) above beginning September 3, 1986 and continuing until such time as the violation was corrected."

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.

System Gang 8622 was established on April 21, 1986. One of the Extra Gang Laborers was assigned as a Truck Driver. The Gang was also assigned a bus, which was driven as needed by the Truck Driver. The Claimant was assigned as Truck Driver commencing August 26, 1986. He was displaced by a senior employee on September 2, who in turn was displaced by a more senior employee on September 3 or 5 (the record being unclear on this point).

The Claimant, qualified as both Bus Driver and Truck Driver, contends that he should have been retained as Bus Driver when displaced as Truck Driver. The difficulty with this position is that there was not, throughout the Gang's existence, a Bus Driver position. There is no showing that the Carrier was prohibited from using one employee to operate both vehicles as needed. Since the two employees who succeeded the Claimant were senior to him as Truck Driver (the established position), there is no basis for the Claim.


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Award No. 28436  
Docket No. MW-28313  
90-3-87-3-875

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 21st day of June 1990.