

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway 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 establish a trackman-driver position on District Gang 150 headquartered at Belton, Missouri (System File B-2020/EMWC 86-7-21B).

(2) As a consequence of the aforesaid violation, Trackman-driver J. J. Henggeler shall be allowed pay at the trackman-driver rate for each work day beginning sixty (60) days retroactive from May 7, 1986 and continuing for so long as District Gang 150 uses a truck without an assigned trackman-driver."

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.

The Organization charged that Carrier violated Rule 18(a)(4) of the controlling Agreement when District Gang #150 headquartered at Belton, Missouri was operating a gang truck without a trackman-driver. It also cited other Rules Carrier allegedly violated. Specifically, based upon Claimant's April 23, 1986 letter to the General Chairman wherein he asserted that a trackman-driver was not assigned to District Gang #150, the Organization filed the instant Claim. The Organization contended that said gang was assigned a motor vehicle (hy-rail truck) for the purpose of transporting men and materials in connection with the gang's work and, as such, pursuant to Rule 18(a)(4) Carrier was obligated to establish a trackman-driver's position. It also contested Carrier's contention that Rule 27 was applicable to these facts, arguing instead that the gang was not composed of one (1) foreman and one (1) assistant foreman. Rules 18(a)(4) and 27 are referenced as follows:

"Rule 18. Trackman-Driver

(a) The classification of trackman-driver is established for track gangs in the Track Sub-department and in the System Rail Laying Sub-department in accordance with the following:

(4) When motor vehicles for use on the highway are assigned to a gang in the Track Sub-department or in the System Rail Laying Sub-department for the purpose of transporting men and material in connection with their work, one or more positions of trackman-driver shall be established in each such gang. New positions or vacancies (sic) will be bulletined in accordance with Rule 36 to employees in the applicable seniority district. If no qualified employee with trackman-driver seniority bids on the bulletined position, the senior qualified laborer making application shall be assigned."

"Rule 27. Patrolling and Inspecting Track

(a) When patrol and inspection of other than yard tracks requiring the use of an on-track vehicle is performed by other than supervisors, it will be performed:

(1) By two-man district gangs, consisting of foreman and assistant foreman, or

(2) By a foreman and/or assistant foreman, accompanied by one or more trackmen who return to their headquarters point each day."

Contrawise, Carrier contended that the vehicle used by District Gang #150 was a patrol truck vehicle (hy-rail equipped pick up truck) and was used exclusively to transport men and not materials. Since its use was solely for track inspection, Carrier asserted that it was not required to establish a trackman-driver position. Furthermore, it argued that District Gang #150 met the requirements of Rule 27, since the vehicle crew was composed of one (1) foreman and one (1) trackman.

In considering this case, the Board concurs with Carrier's position. Under Rule 18(a)(4) when a motor vehicle for use on a highway is assigned to a gang in the Track Sub-department or in the System Rail Laying Sub-department for the purpose of transporting men and materials in connection with their work, Carrier is required to establish one or more positions in each gang.

There is no compelling evidence in this record that the vehicle was not a patrol type vehicle and no evidence that said vehicle was used to transport materials. If the Organization would have established that the vehicle was used on the highway and also transported materials, it would have developed the necessary defining contractual ingredients to sustain the Claim. Similarly, there was nothing wrong with the vehicle's staffing under Rule 27(a)(2), since the patrol and inspection of tracks could be done by an Assistant Foreman and one or more trackmen. Rule 27(a)(2) simply put, states that the patrol and inspection of tracks could be done by a foreman and/or an assistant foreman. The word "or" in this context allows for the sole assignment of an assistant foreman.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.