

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (D. R. Phillips
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The question involved is a Seniority dispute. The carrier is violating Mr. D. R. Phillips seniority as a trackman by working a trackman driver in the position of patrolling track."

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 Claimant as an individual advances to the Board a claim that was initially filed by his Organization. The claim is based on the fact that the Carrier was utilizing a trackman driver, accompanied by a Foreman, to patrol track between Springfield, Missouri, and Bolivar, Missouri. The Claimant relies on Rule 27 (a) (1) and (2) arguing that these Rules require that the Carrier use a Foreman and/or Assistant Foreman accompanied by one or more trackmen not trackman drivers. Rule 27 (a) (1) and (2) state:

"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."

The problem with the Claimant's case is that he relies on Rule 27 in isolation and out of context of the rest of the Agreement. A trackman driver is constructively a trackman. Rule 18 (6) of the Agreement states:

"Trackmen-drivers shall be working employees in the gang and will perform as trackmen when not being used in the capacity as trackman-driver."

This makes clear that there is no distinct separation of duties and job rights between a trackman and trackman-driver for purposes of patrolling.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.