

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29540
Docket No. MW-29722
93-3-91-3-69

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Cleveland Division Class 2 Machine Operator J. Baily instead of Youngstown Division Class 2 Machine Operator J. Agnew to operate a yard cleaner on the Youngstown Division on June 21, 22, 23, 26, 27, 28 and July 3, 1989 (System Docket MW-849).

(2) As a consequence of the aforesaid violation, Mr. J. Agnew shall be allowed fifty-six (56) hours of pay at the Class 2 Machine Operator's straight time 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 employe 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.

At the time this dispute arose, Claimant J. Agnew had established and held seniority as a Class 2 Machine Operator on the Youngstown Seniority District, and J. Baily had established and held seniority as a Class 2 Machine Operator on the Cleveland Seniority District but held no seniority on the Youngstown Seniority District. On June 21, 22, 23, 26, 27, 28, and July 3, 1989, the Carrier assigned Baily to perform machine operator work

at Ashtabula, Ohio, at various locations on the Youngstown Seniority District. Baily operated a yard cleaner picking up ore and coal spillage at these locations during this time period, and expended eight man-hours per day performing this work.

The Organization maintains that the Carrier violated the Agreement because it did not afford Claimant an opportunity to perform this machine operating work in accordance with his Youngstown machine operator seniority, and that Claimant was fully qualified and readily available to perform this work had the Carrier afforded him an opportunity to do so. The Organization asserts that this dispute involves bad faith on the part of the Carrier. The Organization contends the Carrier's actions in this matter represent an example of the Carrier's total disregard for its contractual obligation regarding the seniority district provisions of the Agreement, and its failure to live up to that obligation.

The Organization asserts that the Claimant suffered economically from the Carrier's action through loss of 56 hours of straight time pay. The Carrier contends that the Agreement does not provide for a penalty to be paid, and that the Organization has not made an affirmative showing that the Claimant experienced a loss of earnings.

The Organization alleges that Rule 4, Section 5(a) of the Agreement establishes separate seniority districts, and contends that work performed within a specific seniority district must be reserved for employees holding seniority thereon. The Carrier maintains that the yard facilities at Ashtabula, Ohio, were shared by work forces from both the Youngstown and Cleveland security districts as a matter of past practice. The Carrier further maintains that the work performed by Baily at Ashtabula was of an inconsequential nature and thus not reserved to employees holding seniority on the Youngstown Seniority District.

The Carrier argues that Claimant is not entitled to a monetary remedy based upon eight hours per claim date. The Carrier contends that Claimant was employed and working as a Machine Operator at a territory site where Carrier had assigned him at the time of each claim date. The Carrier asserts that since Claimant has already received his wages for working on each of the claim dates, any such compensation allowed as a remedy would thus constitute a penalty and should therefore be denied. The Organization maintains that Claimant should be compensated for the full eight hours per claim date to prevent a de facto abolishment by Carrier of seniority district lines contrary to the provisions of the agreement.

Both parties have cited several awards to support their respective positions. After reviewing said awards, the Board finds them to be inapplicable in this case.

In reviewing the file as developed on the property and based upon that information, the Carrier is directed to pay the Claimant two hours of pay at the Class 2 Machine Operator's straight pay rate for each claim date, for a total award of 14 hours of straight pay.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.