

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29641
Docket No. MW-28005
93-3-87-3-524

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 Carrier violated the Agreement when it assigned an assistant foreman instead of a trackman-driver to operate Truck No. 2266 on Gang 122, headquartered at Arcadia, Kansas on a regular daily basis (System File B-1457/EMWC 86-5-12).
- (2) As a consequence of the aforesaid violation, Trackman-Driver J. G. Rosenbaum shall be paid at the trackman-driver rate of pay for all time Truck No. 2266 is operated without an assigned trackman-driver beginning sixty (60) days retroactive from April 15, 1986 and continuing until the violation is 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 employee or employees involved in this dispute are respectively carrier and employees 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 relevant time, Claimant was a trackman-driver assigned to Gang 122 headquartered at Arcadia, Kansas. This claim involves asserted rule violations because Assistant Foreman R. Baker of Gang 122 operated Truck No. 2266 assigned to that gang without a trackman-driver for over 30 days.

Three vehicles were assigned to Gang 122. The ordinary operation of those vehicles was as follows: Truck No. 7399 (a material truck operated by a trackman-driver to pick up and deliver materials), 2256 (a district truck operated by a trackman-driver for transporting foreman and trackmen to job sites) and 74600 (a crew hauler truck driven by an assistant foreman to transport machine operators to job sites).

Rule 18(a)(4) states, in relevant part:

"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."

Rule 18(a)(5) states, in relevant part:

"The establishment of trackman-driver positions does not grant such employees the exclusive right to the driving of trucks, and does not preclude other members of the gang from driving a motor vehicle assigned to the gang for which they will receive no additional compensation; however, trackman-driver, when available, shall be used for this purpose in preference to other trackmen in the gang."

There is no rule support for the Organization's contention that a trackman-driver must be assigned to operate every vehicle assigned to the gang. Indeed, Rule 18(a)(4) states only that when a gang has vehicles assigned to it, "one or more positions of trackman-driver shall be established in each such gang." Had the parties intended that each vehicle required the assignment of a trackman-driver, they could have easily stated that requirement. This gang has two trackman-drivers. It therefore had "one or more positions of trackman-driver" The staffing dictated by the rules have been met.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever, Secretary to the Board

Dated at Chicago, Illinois this 7th day of June 1993.