

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29760
Docket No. MW-29825
93-3-91-3-181

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

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

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

- (1) The Agreement was violated when the Carrier assigned the operation of the three way dump truck formerly assigned to Three Way Dump Operator D. Sabo to various employees on a consistent basis beginning on August 9, 1989 and continuing instead of assigning Claimant Sabo (System Docket MW-931).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be paid for all man-hours expended by other employees filling his former three way dump truck operator's position."

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 employee 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.

This case combines three claims filed on August 15, September 5, and October 9, 1989. They allege that Carrier violated the Agreement by allowing others to drive a three-way dump truck after abolishing Claimant's position as a driver of the truck on August 1, 1989.

At the Board level, Carrier has raised several procedural objections to the combined claim, arguing that it has been expanded upon and that new Rules violations not brought up on the property are being advanced.

It contends, for example, that at no time on the property did the Organization seek damages in general, continuous claims, but have rather specifically stated the hours requested, most at the overtime rate, on specific dates.

While all three claims do speak of specific dates for which overtime is sought, we note that the claim of August 15, 1989, specifies the date of rules violations as "August 9, 1989-August 10, 1989 and Continuing" and indicates under settlement and/or payment sought "August 9, 1989 (4) overtime Aug. 10, 1989 (4) hours overtime and all other time made on the 3-way dump." Because of this, we do not find that the Organization's claim before this Board for pay "for all manhours expended by other employees filling his former three-way dump truck operator's position" to be inappropriate.

Carrier also suggests that Rule 1; Rule 3, Section 1 and 4(a); and Rule 4, Section 1(a) are improperly before us, since they were not discussed on the property. While the Scope Rule was cited in the initial claim, there appears to have been no mention of the other Rules. Carrier is correct on this point.

As to Carrier's suggestion that the Organization did not previously protest the use of junior employees or other than those in the Machine Operators category, we note that in a letter dated June 21, 1990, the Carrier discussed the Organization's claim that junior employees were being used. At the same time, it is apparent that both parties understood that what was at issue here in part was Carrier's contention that it acted appropriately under that portion of the Scope Rule that states that

"The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement."

As to the merits of the claim, we do not find that the Organization has met its initial burden in proving that the truck in question was utilized with sufficient regularity so as to warrant the establishment of a full-time position, thereby enabling Claimant the opportunity to perform the work in accordance with his seniority. Thus, we have no reason to conclude that assignments on

Form 1
Page 3

Award No. 29760
Docket No. MW-29825
93-3-91-3-181

the truck were other than temporary, as Carrier suggested. Rule 19 allows for the temporary assignment of the work of one class to an employe holding a position in another class.

Under the circumstances present here, Carrier was not violative of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.