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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29796
Docket No. MW-30059
93-3-91-3-471

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Monongahela Railway Company

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

- (1) The Agreement was violated when the Carrier assigned Swingmaster Operator R. L. Chisler instead of Mr. J. R. Franks to perform other than work equipment operator work (stacking materials and truck driving) on May 12, 1990.
- (2) As a consequence of the aforesaid violation, Mr. J. R. Franks shall be allowed nine and one-half (9.5) hours of pay at his time and one-half 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.

Carrier owns and operates two Swingmaster vehicles (rubber tired Hi-Rail cranes); one of which is regularly operated by Swingmaster Operator (SMO) L.R. Liberatore, and the other by SMO R.L. Chisler. On May 12, 1990, both SMO's were assigned to work with their machines between Mileposts W-2 and W-6. It is not disputed that upon reporting to work on the morning of May 12, 1990, SMO Chisler found a note from the Mechanic stating that his assigned Swingmaster was inoperable and would not be repaired that day. SMO Chisler thereafter drove to and from the work site in a

Stake Body Truck. Carrier asserted on the property that the truck in question "is assigned to the operators for their transportation and that of materials and supplies necessary for the operator of their Swingmasters".

The record developed on the property does not show what other work SMO Chisler performed on May 12, 1990 between the hours of 6:00 am and 3:30 pm. But we do know that he claimed and was paid 9.5 hours at his SMO rate of \$13.85 per hour for his work that day.

This claim is for the overtime hours worked by SMO Chisler on Saturday May 12, 1990, and is grounded in Rule 4-A-3(i) which reads as follows: "(i) Where work is required by the carrier to be performed on a day which is not part of any assignment, it may be performed by an extra or furloughed employee who will otherwise not have forty hours of work that week, in all other cases by the regular employee." Carrier and the Organization also each have invoked Section 6 of the Work Equipment Operators Agreement of March 28, 1990:

"During periods when the machine is not being used the operator will be used to assist in routine maintenance and repairs to the machine. It is recognized that the operator may perform other incidental Maintenance of Way work but may not perform any work which will adversely affect another individual."

In the claim filed on the property, it is alleged that SMO Chisler not only drove the truck to and from the work site but also "worked with L.R. Liberatore between MP W-2 and W-6, while his machine remained in Waynesburg". In further handling, the Organization claimed that SMO Chisler "performed truck driver duties and adversely affected the Claimant's opportunity to work". In handling on the property, Carrier contended that SMOs routinely drive themselves in the truck to and from the work sites where the Swingmaster machines are located, and that SMO Chisler performed no other truck driver duties on May 12, 1990.

The conflicting evidentiary assertions regarding what work SMO Chisler actually did remained deadlocked on the property. In their submissions to this Board, however, both Carrier and the Organization each presented additional assertions regarding the work performed that day: Carrier asserting that the SMOs were assigned to pull long strips of welded rail and the Organization asserting that SMO Chisler stacked materials between MP W-2 and W-6. Not only are those belated bare assertions de novo, but neither is supported by even a shred of probative evidence. Indeed, absent speculation and conjecture, nothing in this record establishes

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exactly what work SMO Chisler actually performed between 6:00 am and 3:30 pm on May 12, 1990, aside from transporting himself and the other SMO to and from the work site in the assigned vehicle. The evidence is insufficient to support the claimed violation of either Rule 4-A-3(i) or Section 6 of the March 28, 1990 Work Equipment Operator Agreement. Accordingly we have no alternative, but to dismiss this claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 29th day of September 1993.