

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29846
Docket No. MW-29735
93-3-91-3-84

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy 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 mechanics represented by the IAM instead of BMWWE represented equipment repairmen to perform repairmen's work on the tie change out machine on the Pittsburgh Division between Compitt and Packe interlocking on October 30, 31, November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1989 and continuing (System Dockets MW-892, MW-893, MW-894 and MW-895).
- (2) As a consequence of the aforesaid violations:
 - (a) Repairmen G. L. Robinson and J. A. Slayton shall each be allowed eight (8) hours' pay per day at the double time rate for October 30, 31, November 1, 2 and 3, 1989.
 - (b) Repairmen G. L. Robinson and J. A. Slayton shall each be allowed eight (8) hours' pay per day at the double time rate for November 13, 14, 15 and 16, 1989 and eight (8) hours' pay at the straight time rate, eight (8) hours' at the time and one-half rate and eight (8) hours' pay at the double time rate for November 17, 1989.
 - (c) Repairmen W. T. Hordubay, W. E. Rauch, J. L. Guiher and G. C. Moldovan shall each be allowed

eight (8) hours' pay at the straight time rate, eight (8) hours' pay at the time and one-half rate and eight (8) hours' pay at the double time rate for each day for October 30, 31, November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1989 and continuing.

- (d) Repairmen M. V. Uhring and R. G. Vanemon shall each be allowed eight (8) hours of pay per day at the double time rate for November 6, 7, 8, 9 and 10, 1989."

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.

As Third Party in Interest, the International Association of Machinist and Aerospace Workers was advised of the pendency of this dispute and filed a Submission with the Board.

This Claim was filed after the Carrier allegedly assigned certain work on a Tie Change Out Machine ("TCOM") to employees represented by the International Association of Machinists and Aerospace Workers ("IAM&AW") instead of those represented by the Organization. The disputed work was carried out on the Pittsburgh Division between Compitt and Packe interlocking, and, under the TCOM Agreement in effect between the parties, TCOM work at that location should have been assigned to members of the Organization. While initially handled as four separate Claims, these Claims were consolidated into one Claim since the issues are identical.

Before proceeding to the merits of the Claim, we will first address two procedural contentions made before the Board.

The first contention is that the dispute is not properly before the Board because the Organization withdrew the four System Dockets cited in the Statement of Claim during the on-the-property handling of the dispute. A close review of the record shows, however, that the Organization, on July 31, 1990, withdrew System Docket MW-865, a Claim essentially identical to this consolidated Claim. We find that the instant Claim is thus properly before the Board.

The second contention is that the Board adjudicated the instant Claim in Third Division Award 29499, a Claim related to the TCOM which was advanced separately by one of the Claimants in this dispute. There the Board dismissed the Claim for failure to meet the requirements of Circular No. 1, but did not discuss the Claim on the merits. In addition, the Claim in that case referred to "...the initial Claim submitted by District Chairman Guarnieri...", whereas the initial Claims in the instant dispute were filed by District Chairman Sean Ferris. We thus find that the Board has not previously adjudicated this dispute.

We consequently conclude that this dispute is properly before us on the merits.

In one of the System Dockets before us as part of the consolidated Claim, the Claimants claimed time for 15 dates on which members of the IAM&AW allegedly performed work on the TCOM. The Carrier asserted that the Claimants had never worked on a TCOM before, and that the Machinists were brought in for training purposes only, and returned to their regular assignments when the training period had been completed. Since the Organization had the opportunity to do so, but did not rebut this material statement by the Carrier, it stands as established fact, and we find no violation of the Agreement since no repair work was apparently performed except that incidental to training the Claimants.

The three other System Dockets before us in the consolidated Claim involve time claims for two positions on the TCOM on a second trick, held by members of the IAM&AW. The Carrier contended on the property that the Organization was offered the second trick positions on the TCOM, but declined the opportunity. The Organization made no effort on the property to rebut this material statement, and it thus stands as established fact. Since, on the basis of the record properly before us, the Organization was offered the work in question and declined it, it cannot now succeed with time claims for the same work. We will therefore deny the consolidated Claim in its entirety.

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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 26th day of October 1993.