

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30837
Docket No. MW-30398
95-3-92-3-141

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Welder G. Taylor to perform Track Subdepartment work (operate a dump truck) while assisting the Loyal Section Gang forces of Loyal, Kentucky in performing their assigned duties on November 19, 20 and 21, 1990 [System File 3(18)(90)/12(91-198) LNR].

(2) As a consequence of the violation referred to in Part (1) above, senior cut-off Machine Operator L.W. Miracle shall be paid eight (8) hours' pay at his respective straight rime rate of pay for each of the dates the welder performed Track Subdepartment work."

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.

When the claim was initially presented on the property, the Organization alleged two separate violations, the first being the assignment of a Backhoe Operator to operate a ballast regulator and the second being the assignment of a Welder to operate a dump truck. As set forth in the Statement of Claim above, only the

latter aspect of the claim has been presented for adjudication by this Board.

The on-property record reveals that on November 19, 20 and 21, 1990, the Carrier assigned Welder G. Taylor to operate a dump truck hauling asphalt and gravel for grade crossing work at or near Pineville, Kentucky, on the C.V. Seniority District. He expended eight man-hours per day performing this Track Subdepartment work.

The Organization contends that although the Carrier did not question its assertion that the Claimant was available and qualified to perform the subject work, it nevertheless, made no effort to call him.

Without going further into the merits on appeal, a review of the record reveals that while the claim was being handled on the property, the Carrier offered to settle it for the three days the Organization claimed Welder G. Taylor operated the dump truck. The Organization now requests three days. Although the Organization refused the compromise offer while the matter was being handled on the property, insisting on the full amount claimed, we believe that three days pay is the appropriate remedy.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.