

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31259  
Docket No. MW-30905  
95-3-92-3-767

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (former  
( Seaboard Coast Line Railroad Company)

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

- (1) The Carrier violated the Agreement when it assigned Mr. Ron Haley from the Louisville and Nashville (L&N) Railroad to operate a material handler to unload crossties from gondolas on the Lineville Subdivision, Lineville, Alabama from July 22 through 31, 1991 [System File BKJ-91-63/12(91-1473) SSY].
- (2) As a consequence of the violation referred to in Part (1) above, Atlanta and Waycross Machine Operator B. K. Johns shall be allowed seventy (70) hours' pay at his respective straight time rate and twelve (12) hours' 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 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.

Specific to this dispute the Organization alleges that the Carrier utilized an employee holding L&N seniority to cross over into the Atlanta/Waycross Seniority District to perform work. The employee foreign to the District was instructed to unload crossties from gondolas in the territory in which he held no seniority.

The Carrier does not deny the occurrence. To that extent the claim is sustained without getting into the specifics, Rules and material facts. The Carrier, however, makes two arguments. First, that the "foreign employee" worked on his own territory on some of the claim dates. Second, that even when the "foreign employee" was not on his home territory, the Claimant was performing the same work, suffered no monetary loss and was not denied work opportunity.

The parties provided the Board with Award support for their positions on monetary compensation. We have visited this issue numerous times and reach this conclusion. Where the claim dates are inaccurate, that part of the claim must be denied. Where it is substantiated that on various claim dates the Carrier permitted an employee without seniority rights to perform work in another seniority district, that has resulted in a loss of work opportunity. This is particularly the case in these instant circumstances. The Organization stated that this was not the first time where this same situation occurred utilizing the L&N employee in Claimant's seniority district. The Organization pointed out that the Claimant returned from furlough and "... fears that the future work opportunities may be limited...." There is no refutation.

The Board holds that Claimant is to be compensated for the loss of work opportunity. There was no dispute on property that the work involved both straight time hours and time and one-half hours lost by the Claimant. Claimant is to be appropriately compensated from July 25 through 31, 1991. The absence herein, of qualified Group A Operators available to perform the work is not a defense for Agreement violation. The Claimant lost his ability to perform the work rightfully protected by his Agreement and such loss of work opportunity in violating seniority districts cannot be regained.

#### AWARD

Claim sustained in accordance with the Findings.

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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 1st day of November 1995.