

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31263
Docket No. MW-30930
95-3-92-3-742

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 Employees
(
(Consolidated Rail Corporation

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

- (1) The Agreement was violated on February 28, March 3, 5, 6, 18 and 20, 1991, when the Carrier assigned Pittsburgh Seniority District employees S. Smiley and M. Berryman to perform vehicle operator work between Mile Posts 37.5 and 38 on the Ft. Wayne to Pittsburgh Main Line, instead of assigning Youngstown Seniority District Vehicle Operator M. Botchvaroff to perform the work (System Docket MW-2113),
- (2) As a consequence of the aforesaid violation, Youngstown Seniority District Vehicle Operator M. Botchvaroff shall be allowed forty (40) hours' pay at the vehicle operator's pro rata rate of pay and twenty-five (25) hours' pay at the time and one-half rate of pay."

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.

A detailed review by this Board finds the following. The Organization argues that on February 28, March 3, 5, 6, 18 and 20, 1991, the Carrier utilized two different employees from the Pittsburgh District to perform vehicle operator work on the Youngstown District for which they possessed no seniority. In the on property review of the incidents the Organization alleges movement from the Pittsburgh District to M.P. 37.5 - M.P. 38 on the Ft. Wayne to Pittsburgh main line, or states movement to a derailment within the Youngstown Seniority District.

The supporting evidence from the Organization includes two letters from a Pittsburgh District employee and a Foreman. The Foreman makes reference to the movement of materials on June 20 and 24, 1991, from New Galilee in the Youngstown District, rather than from Pitcairn. He also discusses material transfers on July 29, 1991. The other employee's full statement includes only one relevant statement that "material was not transposed (sic) from Conway" (emphasis in original). That statement is apparently in reference to February 28, March 3 and March 5, 1991, and provides no insight as to the type of materials or work performed.

The Carrier denies violation of the Agreement in that the transfer of material from Conway to the derailment was proper. It continues to argue that the work "was strictly material management" and therefore movement of materials from Conway Yard to a derailment within the Youngstown district and the return of scrap was permissible. The Carrier argues that the two vehicle operators performed no work that belonged to the Claimant.

In our review of Rules 4, 17 and Appendix C within the circumstances and facts herein before this Board, we find scant evidence for a conclusion. We have reviewed the seniority district maps and find a lack of clarity in delineating the disputed areas. There is no record provided by the Organization to illuminate this Claim. The Organization's allegations were refuted. The evidence relates to letters from a Foreman on dates not in dispute and from an employee with an unsubstantiated assertion that the materials on three of the disputed days did not come from Conway, without further information such as where the materials came from or if this was movement across seniority districts. The Organization cannot meet its burden of proof with this record. The Carrier's assertion that this work does not belong to the Youngstown district was never clearly refuted. Accordingly, the Claim is denied for lack of proof.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.