

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31361
Docket No. MW-31965
96-3-94-3-315

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company (former
(St. Louis-San Francisco, Railway Company)

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

- (1) The Carrier violated the Agreement when, on various dates beginning March 16, 1987 through May 31, 1992, it failed to bulletin trackman/driver positions and/or assigned other than trackman/drivers to drive vehicles assigned to various gangs. (System Files
B-2313-2/MWC 89-10-23B, B-1457-3/EMWC
97-11-23B, B-1294-2/MWC 91-08-13,
B-1436-22/EMWC 87-6-12B, B-1436-34/MWC
91-06-26C, B-1852-2/MWC 90-07-25A,
B-1436-25/MWC 90-03-26A, B-1436-26/MWC
90-06-11B, B-1586-6/EMWC 87-10-7B, B-1485/EMWC
88-3-31A, B-1436-25/EMWC 87-9-10A,
B-1782-1/EMWC 88-6-9A, B-1436-32/MWC
91-03-01B, B-1436-38/9MWC 92-08-11A,
B-2410/MWC 89-11-27G, B-1436-12/MWC 89-01-27A,
B-1294-1/MWC 91-07-22B, B-1436-30/MWC
90-10-05A, B-1436-28/MWC 90-10-02,
B-1436-36/8MWC 92-02-03C, B-1436-29/MWC
90-09-06A, B-1436-27/MWC 90-07-18C,
B-1436-1/MWC 89-08-24, B-1457-8/MWC 90-09-06B,
B-1457-9/MWC 90-10-05B, B-1457-32/MWC
90-10-26B, B-2312/EMWC 88-3-17B and
B-2313-1/MWC 90-03-06 SLF.)
- (2) As a consequence of the violations referred to in party (1) above, the Claimants named in each of the initial claim letters * shall be compensated at the trackman/driver's rate of pay for all hours lost and/or worked by other than trackman/drivers and the subject trackman/driver positions shall be bulletined."

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.

This docket concerns twenty-eight separate claims, all involving the application of Rule 18 of the Agreement. Rule 18 reads in pertinent part:

"Rule 18. Trackman - Driver

(a) The classification of trackman-driver is established for track gangs in the Track Sub-department and in the System Rail Laying Sub-department in accordance with the following:

(4) When motor vehicles for use on the highway are assigned to a gang in the Track Sub-department or in the System Rail Laying Sub-department for the purpose of transporting men and material in connection with their work, one or more positions of trackman-driver shall be established in each such gang....

(6) Trackman-drivers shall be working employees in the gang and will perform work as trackman when not being used in the capacity as trackman-driver."

The Organization argues that when Carrier establishes any gang, and that gang is assigned a motor vehicle that is used to transport men and material, it is necessary to have a trackman-driver position for each gang. Carrier argues that the gangs involved in the 28 claims involved in this Docket are small surfacing and brushcutting gangs, consisting of a foreman, sometimes an assistant foreman, and two or three machine operators.

They do not have trackmen assigned, do not do track work, and have operated for over thirty years without a trackman-driver. Further, Carrier says, a trackman-driver is considered a working member of the gang and there would be no work for him to perform if assigned to surfacing and brushcutting gangs.

Also, Carrier maintains that 17 of the claims are procedurally defective in a variety of ways. In seven, the Claimant did not hold trackman/driver seniority. Three, were not timely filed under Rule 90. Three, are duplicate claims. And in four, the gang involved is not specified.

The Board notes that Rule 18 (a) (4) is drafted in clear and straight forward language. In clear and unambiguous terms it states that when highway motor vehicles are assigned, to a Track Sub-department gang or to a System Rail Laying Sub-department gang, for the purpose of transporting men and material in connection with their work, a trackman-driver position shall be established in each gang. No exclusionary provisions are contained within the language of Rule 18 (a) (4), exempting small brush cutting or surfacing gangs. Accordingly, none can be considered, as the parties, when drafting the Rule, were perfectly capable of exempting certain gangs, if it were their intent to do so. Accordingly, Rule 18 (a) (4) can only fairly be read to require that each Track Sub-department gang and each System Rail Laying Sub-department gang (no matter what size) that utilizes highway motor vehicles to transport men (plural) and material (the two combined) must have at least one trackman-driver established in the gang. (See Third Division Award 29641.)

The eleven claims that are not procedurally defective will be sustained. The seventeen claims that Carrier alleges to be procedurally defective will be dismissed.

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 29th day of February 1996.