

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31448
Docket No. MW-30845
96-3-92-3-669

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Monongahela Railway Company

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

(1) The Agreement was violated when the Carrier assigned CAT Tamper Operator D. Nestor to perform trackman's work (spiking, spike removal and related tie work) at W.3 to W3.5 on the Waynesburg Southern Branch on June 26 and 27, 1991, rather than assigning Trackman J. Jefferies thereto.

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed ten (10) hours' pay at his respective 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.

Claimant Jefferies is employed by the Carrier and holds seniority as a trackman at Waynesburg, Pennsylvania.

The Organization took exception when the Carrier assigned a CAT Tamper Operator to perform overtime work which included trackman duties between Mile Posts W-3 and W3.5 on the Waynesburg Southern Branch and filed the instant claim on behalf of the Claimant. The Organization contends that the Claimant performs

this type of work on a regular basis and therefore, he was entitled to be assigned the overtime work.

The Carrier denied the claim contending that the Claimant was on vacation on the dates in question and was not available for service. The Carrier contends that it did not violate the Agreement when it assigned the Tamper Machine Operator to surface the track.

This Board has reviewed the evidence and testimony in this case and we find that the Organization has not met its burden of proof that the Machine Operator performed Trackman work. The Carrier contended that no Trackman work was performed and the Organization has not presented any evidence to the contrary.

Since the Organization has not met its burden of proof in this case, the claim must be denied.

AWARD

Claim denied.

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 25th day of April 1996.