

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31454
Docket No. MW-30888
96-3-92-3-746

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
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier failed to assign all of the TCOM center section positions [twenty-two (22)] agreed to by the parties within the January 22, 1988 TCOM Agreement beginning June 17, 1991 and continuing (System Docket MW-2115).

(2) As a consequence of the violation referred to in Part (1) above, the Claimants* listed below shall each be compensated, at their respective and applicable rates of pay, for all wage loss suffered during the period in question and they shall each receive credit for benefits as a result thereof.

H. E. Jones	O. Jarrell
R. A. Ramisier	J. P. Sickora
H. R. Lyon	R. E. Kirlin
W. C. Johnson	T. L. Chalfont
D. B. Murray	O. H. Powell
T. A. Garrison	D. L. Durham
L. Briones	T. E. Thacker
D. L. Shelly	C. W. Perkins, Jr.
G. Stralko	G. N. Ellis
E. L. Swain	R. C. Dimmerling"

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.

The Organization filed the instant claim on behalf of the aforementioned furloughed Claimants when on June 17, 1991, the Carrier assigned four employees "who had no contractual right" to replace crossties in the hump yard at Conway, Pennsylvania. The Organization argues that the Claimants, who held seniority within their respective classes as members of the Tie Change Out Machine (TCOM) were fully qualified and readily available to perform the work in question.

The Carrier denied the claim because it alleged that the work at issue was determined to have been a small tie change-out job which required the use of the intermediate tie replacement machine which can be operated independently of the center section of the TCOM. The Carrier argues that when using the intermediate tie exchange machine, it only has to use one Foreman and two Operators and not an entire crew as is needed when it uses the TCOM.

This Board has reviewed the evidence and we find that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it assigned the employees to replace the crossties.

The record reveals that the Carrier used the senior available TCOM employees to complete the tie change-out project. The Organization has not proven that the Carrier violated any Rule or the TCOM Agreement and there has been no demonstration that the Carrier was required to assign 22 employees to a project which apparently only required three.

It is fundamental that in rules cases the Organization bears the burden of proof. In this case, it has not met that burden. Therefore, 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.