

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Form 1

Award No. 31554
Docket No. MW-32184
96-3-94-3-605

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 August 17, 1992 and continuing when the Carrier assigned four (4) employees from outside the seniority district to perform work at Conway Yard, Conway, Pennsylvania to operate a Jimbo and inserter, instead of assigning Pittsburgh Seniority District employees M. Ryan, E. Nedza and A.B. Roney to perform the work (System Docket MW-3111).
- (2) As a consequence of the violation referred to in Part (1) above, Pittsburgh Seniority District employees M. Ryan, E. Nedza and A.B. Roney shall each be allowed '*** ten (10) hours pay for days listed, all overtime, credit for the days and months to be made whole'"

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 question to be resolved in this case is whether the Carrier violated the controlling Agreement when it used employees from outside the Pittsburgh Seniority District to operate an Intermediate Tie Exchange Machine ("ITEM"). The ITEM is part of the Plasser-Theurer Tie Change-out Machine ("TCOM"). The complete TCOM is a multi-sectioned piece of equipment that removes and replaces ties, removes old tie plates as well as other associated scrap and debris and installs new tie plates.

Certain procedural violations have been raised by the Organization. However, we find, after review, that these have no merit.

With respect to the substance of this claim, we find for the Carrier. The parties on January 22, 1988 signed what is known as the TCOM Agreement to recognize special skills required to operate the equipment at issue here and to provide certain flexibilities with respect to the use of the work force. For example, the TCOM Agreement provides for the right to assign employees to positions which travel with the equipment even though this could result in the crossing of seniority districts.

The Organization argues that, because the ITEM may be used separately, this machine is not a part of the TCOM and, therefore, that (the ITEM itself) is not covered under the TCOM Agreement. However, this contention is not supported by any evidence adduced on the property. The Board also notes that the parties must have been aware, when they negotiated the TCOM, that the ITEM could be operated individually. However, they did not address that issue, further suggesting that the Organization's position lacks support.

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 July 1996.