

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned machinists (Messrs. Swiczkowski, Ritchette, Berry, Griffin, Cook, Bureau, Hardy and Yhlman), who are represented by the IAM to perform repairs, to the TCOM gang headquartered at Brier Hill Yard, Youngstown, Ohio from September 8, 1990 through October 11, 1990 (System Docket MW-1572).
- (2) As a consequence of the violation referred to in Part (1) above, Repairmen J. Morris, T. Stanley, J. Jones, J. Daniel, D. Willis, D. Long, G. Long and A. Edgell shall each be allowed ten (10) hours' pay for each date from September 8, 1990 through October 11, 1990 at the applicable repairman's rate and any overtime. The Claimants are also claiming the same expense allocated to the TCOM under the provisions of the TCOM Agreement."

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.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute and filed a Submission with the Board.

Anticipating the acquisition of the Tie Change Out Machine (TCOM), the Carrier and the Organization entered into an Agreement on January 22, 1988, to provide for the staffing of the machine. The Agreement requires, *inter alia*, the assignment of two Repairmen, although it was agreed this requirement is "not applicable where such work is covered by the agreement with the International Association of Machinists and Aerospace Workers."

At the conclusion of the 1990 production season, the Carrier brought the TCOM to its Maintenance of Way Shop in Canton, Ohio, for repairs. According to the Carrier, four BMWE Repairmen and several IAM Machinists arrived with the TCOM. The Carrier asserts the Machinists had been used to train the BMWE Repairmen. The Organization argues the Machinists were performing work on the TCOM that should have been performed by the Claimants.

A similar dispute was presented to this Board regarding Machinists allegedly performing work on the TCOM after the 1989 production season. In Award No. 29846, this Division wrote:

"... The Carrier asserted that the Claimants had never worked on a TCOM before, and that the Machinists were brought in for training purposes only, and returned to their regular assignments when the training period had been completed. Since the Organization had the opportunity to do so, but did not rebut this material statement by the Carrier, it stands as established fact, and we find no violation of the Agreement since no repair work was apparently performed except that incidental to training the Claimants."

As had been the case the previous year, the Carrier's assertion that the Machinists were employed in a training capacity was unrefuted by the Organization. There has been no evidence the Machinists performed repair work on the TCOM other than such work that would be incidental to their duties as trainers. We must find, therefore, that the Agreement was not violated.

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 29th day of August 1996.