

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31828
Docket No. MW-31306
96-3-93-3-276**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned New Jersey Seniority District employees K.D. Rothermel, D.J. Kurak, R.P. Zarfuss and C.W. Hansler to perform B&B work on the Philadelphia Division at Venice and City Line Avenue, off the Harrisburg Main beginning March 19, 1991 and continuing (System Docket MW-2105).

(2) As a consequence of the violation referred to in Part (1) above, Philadelphia Division Mechanics J. Royer, C. Daub, M. Tallarida and J. Love shall each be allowed ten (10) hours' pay per day, at the mechanic's pro rata rate of pay, for each day the New Jersey Seniority District employees worked on the Philadelphia Division beginning March 19, 1991 and continuing.”

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 were given due notice of hearing thereon.

The Claimants had established and held seniority within the Bridge and Building Subdepartment as B&B Mechanics on the Philadelphia Division's Seniority District and were assigned work of replacing bridge ties at Bridge 0.07 on the Venice Industrial Track. The project involved the use of the Highrail Pettibone Crane at the time that this dispute arose. On March 19 and continuing through March 22, 1991 the Carrier assigned a B&B General Foreman and three B&B Mechanics from the New Jersey Seniority District to the same job.

The Organization argues that the Carrier violated Rule 3 (Selection of Positions) and Rule 4 (Seniority) of the Agreement by assigning employees holding seniority on the New Jersey Seniority District, who held no seniority on the Philadelphia Seniority District, to perform B&B mechanics' work on the Philadelphia Seniority District.

The Carrier responds that the employees from the New Jersey Seniority District were assigned only to "instruct the Philadelphia District employees in the safe procedure of installing bridge timbers using the equipment."

The record contains statements by the Claimants which support the Organization's argument. Claimant S. Williams states that he "was running the Pettibone crane for one week before the New Jersey gang ever came to the Mule Bridge. They did not show us how to run anything. There were four men and they were putting in ties."

Claimant G. Golden states that the employees from the New Jersey Division did not show the Claimants how to operate the Pettibone crane, but showed them how to "install timber quicker."

Claimant J. Dvorak states that the Carrier's claims concerning the use of the crane to install the bridge timbers were untrue, and that he had personally installed bridge timbers using cranes on the Philadelphia Division. He described specific jobs on which he had done this work.

The Organization made a prima facie case that the Carrier violated the Agreement when it assigned employees whose seniority was confined to the New Jersey Seniority District to perform work on the Philadelphia Seniority District. The Carrier failed to support its affirmative defense with convincing evidence.

The Carrier asserts that no monetary remedy should be awarded because the Claimants were fully employed during the four days that the work was done by the employees from the New Jersey Seniority District. The Board disagrees, and concludes that some monetary remedy is justified. If the work had not been performed by the employees from the New Jersey Seniority District, in violation of the Agreement, it would have been performed by employees in the Philadelphia Seniority District.

The Organization argues that each of the Claimants is entitled to ten hours pay for each of the four days of work performed by the New Jersey Seniority District employees. However, there is an irreconcilable difference in fact over whether the work performed in violation of the Agreement exceeded eight hours per day. The award therefore must be limited to eight hours per day, at the mechanic's pro rata rate of pay, for each Claimant for each of the four days during which the Agreement was violated.

AWARD

Claim sustained in accordance with the Findings.

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 26th day of December 1996.