

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32939
Docket No. MW-32155
98-3-94-3-330**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (formerly The Baltimore
(and Ohio Chicago Terminal Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly and timely bulletin operator positions for the Pettibone Crane, backhoe and dump truck as required by Rule 8 [System File 22 (2) (93)/12(93-0823) BOC].**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to bulletin and assign the positions in compliance with the provisions of Rule 8."**

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.

This dispute involves Carrier's obligation to bulletin three Operator positions in the Chicago Terminal - Pettibone Crane, Backhoe and Dump Truck - under Rule 8 of the Agreement, which provides, in pertinent part:

"Rule 8 - BULLETIN AND ASSIGNMENT

(a) New positions or vacancies of thirty calendar days or more duration will be bulletined within fifteen calendar days previous to or following the dates such positions are created or vacancies occur, except that temporary vacancies need not be bulletined until after they have existed for thirty calendar days."

The claim was filed on May 13, 1993 alleging that the three pieces of equipment had been operated on a daily basis in excess of 30 days, and requested that they be advertised for bid. No Claimants were named nor compensation requested. Carrier's response of July 8, 1993 set forth its position that one Pettibone Crane had been advertised and had a permanent Operator while the second was used only on an occasional basis, there was no requirement under the Agreement to advertise a Dump Truck position, and the Backhoe position would be advertised on July 12, 1993.

The correspondence on the property also includes an undated statement signed by 24 employees stating that two backhoes, one Pettibone Crane, one Main Line Tamper and one Front End Loader had been operated on a daily basis for several months without being advertised, and a bulletin for a Carpenter-Truck Driver position. The Organization also asserted that the Backhoe position that was bulletined and awarded was subsequently vacated and not readvertised. Carrier disputed the accuracy and relevancy of these documents, contending that they failed to show that either a Dump Truck Driver position had been advertised or that the equipment that was the subject of the original claim involved anything other than temporary positions used on an as needed basis. Carrier submitted four bulletins of positions in the Chicago Terminal between June 29 and September 14, 1993 including two for a Backhoe Operator. Carrier also objected to the expansion of the claim.

The Organization argues that the undisputed evidence establishes that the positions in question were operated daily for over 30 days and are required to be bulletined under the clear language of Rule 8, citing Third Division Awards 13652 and 27873. In its Submission to the Board, the Organization also relies upon the mandatory language in Rule 44, the Classification of Work Rule, to support its position that the Dump Truck position must be bulletined, relying upon Third Division Awards 8160 and 12632.

Carrier contends that this claim is a request for injunctive relief which the Board has no power to grant, requiring its dismissal, citing Second Division Awards 10708, 10954 and 11135. It also argues that the Organization failed to sustain its burden of proving that there were full-time vacancies for over a 30 day period that required posting, or that the Agreement requires the bulletining of a Dump Truck position, which is not listed as a separate job classification, relying upon Public Law Board No. 4768, Award 3; Second Division Award 10735; Third Division Award 24431.

A careful review of the record convinces the Board that this case, in effect, requests a declaratory judgment that Carrier violated Rule 8. As noted above, no Claimants are named, nor is there a request for any monetary relief for the alleged violation. The Organization asks the Board to direct Carrier to post the three positions allegedly vacant for over 30 days more than five years ago. The Board has no authority to grant injunctive relief, or force Carrier to create new positions. Second Division Awards 10708, 10954 and 11135. Further, there is undisputed evidence in the record that two Backhoe Operator positions were posted in the Chicago Terminal during the period subsequent to the filing of the initial claim, making that aspect of the claim moot. Additionally, the Organization failed to meet its burden of proving that Carrier was obligated under the Agreement to post a Dump Truck Driver position. For all of these reasons, the claim must be dismissed.

AWARD

Claim dismissed.

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 23rd day of November 1998.