

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33392
Docket No. CL-35088
99-3-98-3-848**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12235) that:

Claim No. 1 - (TCU file: 504-4398, Carrier file: HS-MCL-1067)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on January 14, 1997, the Carrier instructed and/or allowed Branham Construction Company employees, non-clerical employees and strangers to the Agreement, to use a rented mobile crane to unload and then transport material to assist CSXT Maintenance Crew to repair a crane inside the confines of the Locomotive Shop. Branham Construction employees used this rented crane equipment in the Locomotive Shop transporting, and/or moving equipment with portable powered equipment, (crane) which is exclusive to clericals at this location; and

(b) The Carrier shall now allow Claimant Delmas M. Dunlap (who was on his rest day) 8 hours pay (\$127.24) at the overtime rate.

Claim No. 2 - (TCU file: 504-4405, Carrier File: HS-MCL-1083)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on February 20, 1997, the Carrier instructed and or allowed Branham Construction Company employees, non-clerical employees and strangers to the Agreement, to use a rented mobile (Pettibone) crane to assist in the repair of crane in high box at the Huntington Locomotive Shops. Branham Construction employees used this rented Crane equipment in the Locomotive Shop transporting, and/or moving material with portable powered equipment, (crane) which is exclusive to clericals at this location. Previously to Branham being used, this exact work was historically and customarily assigned to the Clerical Store Room Mobile Crane Operators; and

(b) The Carrier shall now allow Claimant George W. Chapman, a qualified Store Room Mobile Crane Operator eight (8) hours (\$127.24) at the overtime rate, in addition to other earnings for the same date.

Claim No. 3 - (TCU file: 504-4407, Carrier file: HS-MCL-1097)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on March 1, 1997, the Carrier instructed and or allowed Branham Construction Company employees, non-clerical employees and strangers to the Agreement, to use a rented mobile crane to unload and then transport material to assist CSXT Maintenance Crew to repair a crane inside the confines of the Locomotive Shop. Branham Construction employees used this rented Crane equipment in the Locomotive Shop transporting, and/or moving material with portable powered equipment, (crane) which is exclusive to clericals at this location; and

(b) The Carrier shall now allow Claimant Delmas M. Dunlap, 8 hours pay (\$127.24) at the overtime rate.

Claim No. 4 - (TCU file: 504-4408, Carrier File: HS-MCL-1098)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on February 7, 1997, the Carrier instructed and/or allowed Branham construction Company employees, non-clerical employees and strangers to the Agreement, to use a rented Pettibone mobile crane to unload and then transport furnace ducts they removed from the old Boiler Shop inside the confines of the Locomotive Shop. Branham Construction employees used this rented Crane equipment in the Locomotive Shop transporting, and/or moving material with portable powered equipment, (crane) which is exclusive to clericals at this location; and

(b) The Carrier shall now allow Claimant Delmas M. Dunlap, 8 hours pay (\$127.24) at the overtime rate.

Claim No. 5 - (TCU file: 504-4409, Carrier file: HS-MCL-1099)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on February 6, 1997, the Carrier instructed and/or allowed Branham Construction Company employees, non-clerical employees and strangers to the Agreement, to use a rented Pettibone mobile crane to unload and then transport furnace ducts they removed from the old Boiler Shop inside the confines of the Locomotive Shop. Branham construction employees used this rented Crane equipment in the Locomotive Shop transporting, and/or moving material with portable powered equipment, (crane) which is exclusive to clericals at this location; and

(b) The Carrier shall now allow Claimant Delmas M. Dunlap, 8 hours pay (\$127.24) at the overtime rate.

Claim No. 6 - (TCU file: 504-4410, Carrier file: HS-MCL-1095)

(a) The Carrier violated the terms of the Clerks' General Agreement, primarily Rule 1, when on February 28, 1997, the Carrier instructed and or allowed Ashland Fabrication Company employees, non-clerical employees and strangers to the Agreement, to use a rented mobile crane to unload and then transport used crane parts inside the confines of the Locomotive Shop. Ashland Fabricating Company employees used this rented Crane equipment in the Locomotive Shop transporting, and/or moving material with portable powered equipment, (crane) which is exclusive to clericals at this location; and

(b) The Carrier shall now allow Claimant Delmas M. Dunlap, 8 hours pay (\$127.24) at the overtime rate."

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.

On the six claim dates in question, the Carrier was repairing an overhead crane at its Locomotive Shop in Huntington, West Virginia. The Carrier contracted for the services of an outside contractor, along with its crane and Crane Operator. The Organization claims that the work performed by the contractor belongs to clerical employees, and as such, Rule 1 was violated. The Carrier maintains two Storekeeper/Power Equipment Operator positions that move materials used to repair locomotives around the shop.

On the claim dates the Carrier's Maintenance of Way employees were repairing an overhead crane. In order to reach the crane, the Carrier employed the services of the outside contractor to lift the materials up to the employees working on the crane. While the Carrier has small cranes, it does not have one large enough to reach the height of the overhead crane.

There is no dispute that the Carrier did not have a crane at Huntington that could do the work required. While it appears from the record that at some time in the past a larger crane was available at Huntington, such equipment was moved to another location many years ago.

The Carrier argues that clerical employees do not have the exclusive right to the work performed.

The Organization cites several Awards that it purports to support its position. In particular, it cites Award 75 of Public Law Board No. 3540, which involved the same parties. In that case a Machinist operated an electric walk-behind forktruck to transport material within the locomotive repair area. Those are not the facts in this case.

The Organization has the burden to prove that clerical employees have the exclusive right to operate the same size of crane operated by the contractor and used to assist the Maintenance of Way employees.

The Organization has not met its burden. It failed to prove that the Carrier had the equipment used by the contractor. It also failed to prove that the Claimants were qualified to operate such equipment. At best, it presented a vague allegation that at one time the Huntington Shop had a big mobile crane.

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 13th day of July 1999.