

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35569
Docket No. MW-33394
01-3-96-3-915**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 B&B Structural Welder S. Aftanas to perform machine operator duties (operate a dozer to clear right of way over several spans and small 50 ft. bridges clearing stone and track material for PAT clearance project) on March 20, 1995 and continuing (System Docket MW-4008).
- (2) As a consequence of the violation referred to in Part (1) above, Class 1 Machine Operator G. Pachuta shall be compensated ten (10) hours' pay for each day B&B Structural Welder S. Aftanas performed the work described in Part (1) above and all overtime with credit for day and month for benefit and vacation purposes.”

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.

When this case arose in March 1995, the Claimant was a furloughed Pittsburgh Division Track Foreman who also held a seniority date as a Class 2 Machine Operator. This case presents the claim that the Carrier violated Rule 1 - Seniority Classes, Rule 3 - Selection of Positions and Rule 4 - Seniority of the controlling Agreement(s), when it utilized S. Aftanas, a regularly assigned B&B Structural Welder, to run a Class 2 bulldozer on certain dates in March 1995, commencing on March 20, 1995. The Organization avers that the Carrier was contractually obligated instead to recall the Claimant, who had been furloughed April 24, 1995, to perform the subject work.

In presenting the claim on the property, the Organization asserted but did not prove that Aftanas operated the bulldozer "continuously" on and after March 20, 1995. In handling on the property the Carrier averred that "the duration of the work did not require or warrant advertisement of a Machine Operator" and denied the claim citing Rule 1- Scope, Paragraph 4 and Rule 19 - Assignment to Higher or Lower Rated Positions. Aside from bare contradicted assertions that the "work involved was performed on a regular basis . . . over a two or three week period," the Organization offered no probative evidence of what work was actually performed or how long it was performed and failed generally to support its claim of a "continuing violation" in this case. See Third Division Awards 14450 and 26328.

So far as we can determine from the available record evidence, in addition to patching holes in the various bridge walls, cleaning debris from the bridges and performing occasional traffic control duties on March 20, 21, 22, and 23, 1995, in connection with the Mon Line Bridge Clearance Project, Aftanas also operated the bulldozer for a portion of each of those four days and then observed his rest day on March 24, 1995. In its interpretation and application of Paragraph 4 of the Scope Rule, Special Board of Adjustment No. 1016 determined in Award 24 that "the Scope Rule grants Carrier the right to assign employees across classification lines" and the first sentence of Rule 19 plainly states: "An employee may be temporarily assigned to different classes of work within the range of his ability." From all that appears in this record, Aftanas was properly compensated for temporary cross-classification service, in accordance with Rule 19 and the fourth paragraph of the BMW Scope Rule. We find no persuasive evidence that the Claimant's seniority or recall rights were violated in the process and his claim, therefore, must be denied.

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 24th day of July, 2001.