

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35806
Docket No. MW-32834
01-3-96-3-165**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 Carrier violated the Agreement when it failed to provide Vehicle Operator J. E. Bryan with the means with which to weigh the truck he was assigned to operate on September 14, 1994 which resulted in his having to pay a two hundred ninety-two dollar (\$292.00) fine to the City of Northwood, Ohio on September 29, 1994 (System Docket MW-3680).
2. As a consequence of the aforesaid violation, the Carrier shall ‘. . . reimburse Mr. Bryan the \$292.00, and also to make arrangements so that this does not occur again.’”

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 September 14, 1994, the Claimant received a \$292.00 traffic citation from the City of Northwood, Ohio, because the Carrier's vehicle which he was operating was 5,750 pounds overweight. This claim seeks reimbursement from the Carrier for that fine.

The claim will be denied.

Rule 3250 provides:

"Drivers must obey the motor vehicle laws and be properly licensed. Except for unusual circumstances, it is the driver's responsibility to pay all fines, penalties or charges which may be assessed against them for failure to comply with regulations."

The Claimant attended a safety meeting on August 30, 1994 and was advised by the Carrier that it is the vehicle operator's responsibility to make certain that the vehicle is not overweight and, if there is any doubt, the vehicle operator should take the truck to a private scale to be weighed. At the time, the cost of such weighing was \$25.00 - a cost which the Carrier states it reimburses the vehicle operators.

The Claimant understood Rule 3250, the Rule is reasonable, and, as the Carrier states, if there is any doubt, vehicle operators can have their vehicles weighed, the cost of which will be reimbursed and additionally, if there is any doubt, "[i]f he has any question regarding the weight or lading adjustment he has the option to off load some of the cargo." Further, the record shows that the Claimant was not without control of the events. The record shows that the vehicle operator often loads the vehicle by himself or monitors the loading by others. There is nothing to show that the Claimant was ordered to take an overweight load. Under Rule 3250, the Claimant was therefore obligated to pay the fine for driving an overweight vehicle.

The Organization relies upon Rule 37 and argues that the Carrier was obligated to provide the Claimant with a portable scale or other means to weigh his vehicle. That argument is not persuasive.

Rule 37 provides:

“The Company will furnish employees such general tools as are necessary to perform their work, except such tools as are customarily furnished by skilled workmen.”

Nothing in Rule 37 requires the Carrier to provide a portable scale as argued by the Organization. Rule 37 does not apply as the Organization argues particularly in light of the fact that the Carrier has instructed vehicle operators that if there is doubt about the weight of their vehicle, the vehicle should be taken for weighing, the Carrier would reimburse the vehicle operator for that expense, and the vehicle operator has the additional option to off load some cargo.

Based on the above, the claim shall 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 14th day of November, 2001.