

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37317
Docket No. MW-37115
04-3-02-3-67

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign B & B Vehicle Operator M. A. Weaver to operate his assigned vehicle to transport a backhoe from Walbridge, Ohio to Ottawa, Illinois on September 12, 2000 and instead assigned B & B Foreman L. Dannenberger to perform said work [System File H44225900/12(00-0889) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. A. Weaver shall be allowed five (5) hours' pay at his respective time and one-half rate of pay.”

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.

There is no dispute about the facts in this case. On September 12, 2000, the Carrier needed a backhoe moved from Walbridge, Ohio, to Ottawa, Illinois. The senior employee of Bridge Gang 6P82, Foreman L. Dannenberger, was directed to perform this task. During the trip, he incurred five hours of overtime service while driving a boom truck with a backhoe trailer to relocate the equipment from one city to another.

The instant claim was filed on behalf of the Claimant, a B & B Operator assigned as the Vehicle Operator on Gang 6P82. According to the Organization, the Claimant was qualified to operate the backhoe, and he was at work and available to perform the overtime work opportunity. The Organization contends that the Carrier violated the following Agreement Rules when it failed to assign the Claimant to perform the Vehicle Operator service:

"RULE 1 – SENIORITY CLASSES

The seniority classes and primary duties of each class are:

B & B Department

A. Inspector Roster:

Inspector – Includes Scale, Bridge and Building Inspectors

Inspect scales, bridges, buildings and other structures.

B. Bridge and Building Roster:

1. B & B Foreman – In charge of Plumbers and B & B Mechanics

Direct employees assigned under his jurisdiction.

2. B & B Assistant Foreman

Direct and work with employees assigned to him under the supervision of a Foreman.

* * *

D. Machine Operator Roster:

Machine Operator-Mechanics, Machine Operator

Operate the following machines: Backhoe, Bridge Tie Crane, Locomotive Crane, Truck Crane, Pile Driver.

* * *

D. Vehicle Operator Roster:

Vehicle Operator

Vehicle Operator operates all highway or rail-highway vehicles:

Boom Trucks
Dump Trucks
Log Loaders
Grapple Trucks
Semi-LowBoy
Buses
Fuel Trucks
Six Man Pick-up Trucks

* * *

RULE 17 – PREFERENCE FOR OVERTIME WORK

Section 1 – Non-mobile gangs:

- (a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work

ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them."

The Carrier contends that there was no violation of the Agreement. In its November 15, 2000 denial of the claim, the Carrier expressed its position as follows: "The operation of company vehicles within the Bridge Department does not accrue to any specific class and the supervisor offered this project to the senior employee."

It may well be that both the Foreman and the Vehicle Operator can be assigned to operate vehicles at times and that such work may also be performed by others. However, the issue in this case is not one of work assignment, but rather one of overtime distribution.

The Carrier's position is not consistent with Rule 17, Section 1(a), the controlling Agreement provision. As two recent Awards involving these same parties have held, Rule 17, Section 1(a) relates to assignments in a required job class. Third Division Award 36848; Special Board of Adjustment No. 1110, Award 159. When overtime opportunities arise, whether in continuation of the day's work or not, the senior employee in the particular job class who ordinarily performs the work is to be given preference for the overtime opportunity. Here, the Foreman may have had department seniority, but there is no evidence that he held greater seniority than the Claimant in the applicable job class of Vehicle Operator or Machine Operator. As a result, the Carrier violated Rule 17(a) when it assigned the disputed work to the Foreman rather than the Claimant.

The Carrier cited a plethora of Awards for the proposition that exclusivity must be established when there is a jurisdictional dispute between employees of the same craft. However, this argument was not offered on the property and cannot be considered de novo by the Board. The Board's findings must be based solely upon the record established on the property.

Based on all the above factors, we must sustain the claim in its entirety.

AWARD

Claim sustained.

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 21st day of December 2004.