

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39648
Docket No. MW-37833
09-3-NRAB-00003-030205
(03-3-205)**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Service Lane Force 5X88 Crane Operator C. Woodrum to perform B&B Department mechanic-carpenter work on Hancock, West Virginia Basic force 6D78 on January 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23 and 24, 2002 instead of furloughed B&B Mechanic R. Miles [System File A04530102/12(02-0289) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Miles shall now be compensated for a total of one hundred twenty (120) hours pay at the B&B mechanics straight time rate of pay and have any lost benefits restored.”**

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.

In January 2002, Claimant R. Miles, a B&B Mechanic-Carpenter, was on furlough from his position with Basic Force 6D78 in Hancock, West Virginia. For a period of three weeks (12 ten-hour days) in that month, Crane Operator C. Woodrum, a member of Service Lane Force 5X88, was assigned to work with Basic Force 6D78 while the Claimant was on furlough. Woodrum performed no machine operation during that period; his crane was parked several states away. Instead, he performed work generally performed by a Mechanic-Carpenter. The Crane Operator received his own higher rate of pay during this temporary assignment.

The Organization argues that an employee may not be assigned across jurisdictional lines while an employee on the appropriate seniority list is on furlough. The Carrier contends that there is nothing to prohibit it from assigning secondary duties to an employee when his machine is not needed. Moreover, there was no position for the Claimant to be called back to; this was an assignment, not a position.

There are several lines of prior Board cases that address situations similar to the one before us, each looking at the analysis from a different perspective. The line we find most persuasively pertinent to the situation before us is best represented by Third Division Award 25282 which deals with the question of incidental work. Referee Rodney Dennis acknowledges in that Award that "there is some overlap between job categories . . . that cannot and should not be avoided." But he also notes that full-time assignment to cross-jurisdictional work (one week in his case, three weeks here) cannot be considered "incidental." We agree.

Absent a specific definition of the word "incidental" in the Agreement, we turn to normal usage. In the employment context, "incidental" is generally understood to apply to non-core tasks performed by an employee during the normal course of his regular work. Permitting employees in one craft to perform work that technically belongs to a different craft is designed to eliminate inefficient and costly delays while, for example, an Electrician is called in to screw in a burned-out light bulb. Extensive and exclusive performance of a Mechanic-Carpenter' duties, however, is not incidental to crane operation. Examples of permissible incidental cross-jurisdictional work, on the other hand, are found in Third Division Awards 37668 and 37669. The first Award dealt with one day of clean-up performed by several B&B employees in order to complete their assigned project; the second addressed six hours of cross-

jurisdictional work performed by an employee on each of three days in order to complete a particular task that was properly within his jurisdiction.

The Carrier's argument that there was no position for the Claimant to be called back to is unavailing; the Crane Operator was performing the work of the Claimant's position. When the Claimant requested to bump him, he was told he was ineligible because he could not operate a crane! This is a circular argument that, if adopted, would serve to dissolve utterly the seniority lines now in existence. This observation is confirmed by the parties' Agreement that Service Lane gangs would not be used as a device to eliminate basic maintenance forces.

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 22nd day of April 2009.