

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39649
Docket No. MW-37855
09-3-NRAB-00003-030218
(03-3-218)**

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 Agreement was violated when the Carrier abolished the vehicle operator position on Force 5DE9 and thereafter assigned Foreman M. Albright to operate the gang truck on Force 5DE9 on January 24, 2002 instead of furloughed Vehicle Operator M. Emerick [System File A04533702/12(02-0434) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Emerick shall now be compensated for ‘. . . all straight time and overtime worked by Mr. Albright starting January 24, 2002 until the violation ends, at the vehicle operator rate \$18.89.***’”**

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.

Claimant M. E. Emerick was employed as a Vehicle Operator for Force 5DE9 in Hyndman, Pennsylvania, until he was furloughed on January 24, 2002. Thereafter, the truck that had been assigned to the Claimant was driven by the Track Foreman. Vehicle operation is the main duty of Vehicle Operators; it is not mentioned in the job description for Foreman. The Carrier's response was that because the Forman was CDL qualified, he could be assigned to drive the truck. Moreover, the manpower budget did not permit the recall of an additional employee.

It is a long-established principle that the job duties of various positions in the bargaining unit overlap and unless exclusivity has been clearly established, certain assignments of "secondary" duties, particularly those required in the course of an employee's normal duties, do not violate the parties' Agreement. The Board has no intention of disputing this principle or attempting to overturn it.

The situation here, however, is not of that nature. Although the evidence presented by both parties is scant, the record establishes that the Claimant worked as a Vehicle Operator on Force 5DE9 until he was furloughed, at which point the Foreman took over his duties. There is no evidence that the work changed or decreased, with the possible exception of the gang's manpower budget. It appears that after the Claimant's furlough, the same amount of work was being performed by one employee rather than two.

This, then, is not a case of overlapping duties. Rather, an employee on one seniority list was assigned all the duties previously performed by an employee on a different seniority list and the second employee was laid off. To permit such an action would render Rule 1, which provides for separate seniority lists for different classifications, entirely meaningless. Arbitrators are bound to interpret contracts so that all provisions are accorded meaning and to uphold the Carrier's position in this circumstance would run counter to that tenet.

AWARD

Claim sustained.

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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.