

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39910
Docket No. MW-38114
09-3-NRAB-00003-030568
(03-3-568)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Messrs. R. Hendricks (subsequently displaced by Mr. J. Avelsgaard) and C. LaFromboise (subsequently displaced by other employes) by bulletin of May 15, 2000 to the two (2) Group 5 Machine Operator positions working with District Mobile Crew RP-07 as headquartered positions at Fargo, North Dakota instead of as mobile positions (System File T-D-2126-W/11-00-0537 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now ‘. . . assign the positions as mobile, and that each employe assigned to the positions until the violation is corrected, be allowed the negotiated meal allowance per diem of \$21.25, for each calendar day, beginning [May 22], 2000 and continuing until the violation is corrected. We request that each employe receive the negotiated lodging allowance of \$26.75 per diem for each calendar day, beginning with the first claimed date and continuing until the violation is corrected. We request that each employe assigned to the positions, receive week-end travel allowances for all travel between their residences and end of work week, and start of work week reporting locations, beginning with first claimed date and continuing. We further request that each employe assigned to the crews receive 5% of their earnings while assigned to the positions.”**

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.

The Organization maintains that the Carrier violated the Agreement when two Group 5 Machine Operator positions were bulletined and assigned as headquartered district gangs. According to the Organization, the Machine Operators worked exclusively with a mobile gang and should have been bulletined and assigned as a mobile gang – receiving the compensation that mobile gangs receive. The Carrier counters that it retains the right to designate whether a gang is mobile or headquartered and that neither the Agreement nor the Organization's cited authority prevents the Carrier from making those assignments.

According to the Organization, bulletining the Machine Operator assignment was nothing more than the Carrier's attempt to get around paying mobile gang compensation. According to the Carrier, managing the business is its prerogative, and there are no Rule, Award or Agreement provisions that prohibit the Carrier from bulletining assignments as it deems appropriate.

A similar issue was addressed in Third Division Award 38951 (Campagna) where the Organization claimed that the Carrier violated the Agreement by abolishing a mobile welding assignment and re-establishing it a short time later as a headquartered assignment. The Board, quoting Third Division Award 37844 (Kenis) stated:

“In rejecting the foregoing claim, the Board noted in relevant part:

‘Regardless of whether the Carrier has previously used mobile gangs to work with switch grinders, it is not prohibited from using headquartered crews where circumstances warrant. While the Carrier's inherent rights are not unfettered, they must be respected in the absence of evidence that the Carrier acted arbitrarily or without good faith. Here, we reject the Organization's assertion that the Carrier intentionally switched crews to avoid payment of benefits negotiated for mobile crews. The headquartered positions were compensated for time spent away from home and they were appointed in the exercise of seniority according to the parties' Agreement. No bad faith is suggested under these facts.’”

The above analysis is persuasive. A thorough review of the record evidence and the parties' Submissions indicates that no bad faith is suggested under these facts. The headquartered Machine Operator positions were compensated for time spent away from home and they were appointed in the exercise of seniority according to the parties' Agreement. Accordingly, the Organization has not met its burden of proof.

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 31st day of August 2009.