

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 3

Carrier File No. CMWB 87-9-29A

Organization File No. T-M-605

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it failed and refused to bulletin a new truck driver position on Mechanized Tie Gang No. 1 (313-985), which existed for over thirty (30) days (System File T-M-605/CMWB 87-9-29A).

2. As a consequence of the aforestated violation, Furloughed Truck Driver F.M. Gomez shall be allowed:

"One hundred and ninety-two (192) hours at his respective straight-time Truck Driver rate of pay as compensation for lost work opportunity when the Company failed to bulletin a Truck Driver vacancy on the Mechanized Tie Gang. Claim is further to award Claimant Gomez eight (8) hours pay, as well as all overtime compensation for every regularly scheduled work day for the Mechanized Tie Gang, on an open and continuing basis, until such time as this Truck Driver vacancy is properly bulletined and assigned."

F I N D I N G S

The Carrier established Mechanized Tie Gang 313-985 on

May 4, 1987. The bulletin concerning this Gang called for one Truck Driver and 15 other positions. Assigned to the Gang were one flat bed truck and one school type bus, each in excess of 16,000 pounds. Both vehicles were employed with the Gang, and the Truck Driver was directed to operate either vehicle as needed. According to the Carrier, the bus is in daily operation "about one hour or less", and the truck is operated "less than two hours" each day.

The Organization argues that there should have been two Truck Driver vacancies posted, instead of one. The Organization relies primarily on two Rules, as follows:

RULE 20. POSITIONS TO BE BULLETINED

A. All vacancies and new positions of more than thirty (30) calendar days' duration shall be bulletined in the seniority district for the sub-departments involved.

RULE 55. CLASSIFICATION OF WORK

...

P. Truck Driver.

An employee assigned to primary duties of operating dump trucks, stake trucks and school bus type busses, except trucks having a manufacturer gross vehicle weight of less than 16,000 lbs. or any vehicle of the pick-up, panel delivery or special body type. The term special body refers to trucks such as those used by welder gangs and equipment maintainers with special bodies designed to transport mechanics, tools, equipment and supplies. When

vehicles equipped with snowplow blades are used for plowing snow or moving dirt, the truck driver rate will apply in accordance with Rule 44. Truck Driver will "perform such other work as may be assigned to him when not engaged in driving a truck."

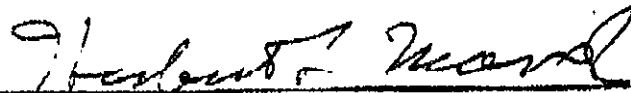
The Organization argues that there were two vacancies for Truck Driver, since two vehicles are in use with the Gang and that these positions are for an extended period beyond 30 days.

The Carrier argues that Rule 20-A is concerned with full-time positions. The Carrier notes the language of Rule 55-P, which refers to "an employee assigned to primary duties of operating" certain types of trucks (emphasis added). The Carrier points out that such duties could not be considered as "primary duties", in view of the limited use of either vehicle.

The Board finds no rule support for the proposition that each truck must have a Truck Driver assigned to it. This is particularly the case where the vehicles are in use for only part of the time. There is no showing that the vehicles were operated by other than the Truck Driver or by the upgrading, where necessary, of another employee, under Rule 44. In sum, there is no convincing argument to require another Truck Driver for the Gang.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



WENDELL A. BELL, Carrier Member



MARK J. SCHAPPAUGH, Employee Member

NEW YORK, NY

DATED: 8/17/90