

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 3
)
) Award No. 17
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed and refused to bulletin a Group 3 Class (e) Carpenter Truck Operator's position on B&B Gang 6813 and/or refused to pay Mr. D. D. Boslau the Group (3) Class (e) Carpenter Truck Operator's rate of pay for operating Truck MW 1915-63295 assigned to B&B Gang 6813 and for performing the duties and responsibilities of said position (System File N-133/950046).
- 2 As a consequence of the violation referred to in Part (1) above, Claimant D. D. Boslau shall be compensated at the applicable Group 3 Class (e) Carpenter Truck Operator's rate retroactive sixty (60) days from the date the claim was filed (July 5, 1994) and continuing until the violation ceases.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The instant claim is quite similar to the claim presented in Case No. 5, Award No. 16. The principal difference is that the instant claim raises allegations concerning a Carpenter Truck Operator position, whereas the claim in Case No. 5, Award No. 16 involved a Sectionman Truck Operator position. The positions of the parties are essentially the same as presented in Case No. 5, Award No. 16. Carrier maintains that the claim is not timely and that the August 16, 1993, Agreement does not apply to pickup trucks. The Organization contends that the claim is for a continuing violation and that the Agreement covers all trucks with gross vehicle weight above 10,000 pounds.

The timeliness issue is identical to the timeliness issue raised in Case No. 5, Award No. 16. We reiterate our holding that the claim presents a continuing violation and is timely. We again note that the issue of laches was not raised and we do not consider it in this case.

The merits require somewhat more discussion. The instant claim involves Carrier's failure to bulletin a Carpenter Truck Operator position. From a comparison of the record in Case No. 5 with the instant record, it appears that the instant case involves a different agreement from the agreement at issue in Case No. 5, albeit one that also was effective August 16, 1993. It appears that the two agreements were negotiated together and, as noted above, the parties have raised the same arguments under each. Moreover, neither party has suggested that there is any significance attributable to the differences in the agreements.

Section 1 of the Agreement at issue in the instant case provides:

Rule 4, "*Bridge and Building Subdepartment*", as contained in the Collective Bargaining Agreement is revised to include the position classifications identified herein in the various groups of the Subdepartment as follows:

.....
Group 3(e) Carpenter Truck Operator
.....

Section 11 provides: "This Agreement in no way modifies the existing practices, understandings, or any other Agreements regarding the operation of trucks or vehicles."

Unlike the Agreement concerning Sectionman Truck Operators, the instant Agreement contains no language expressly limiting the types of trucks subject to the Carpenter Truck Operator classification. The parties agree that pickup trucks with gross vehicle weight under 10,000 pounds are excluded from the scope of the Agreement. Carrier maintains that Section 11 preserved an existing practice relative to all pickup trucks.

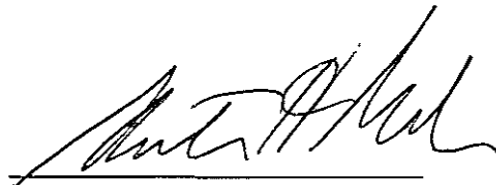
Section 11 is ambiguous. Thus, as in Case No. 5, Award No. 16, Carrier bears the burden to establish that Section 11 provides a limitation on the classification set forth without limitation in Section 1. We face the same disputed evidence that we faced in Case No. 5, Award No. 16. We reach the same result.

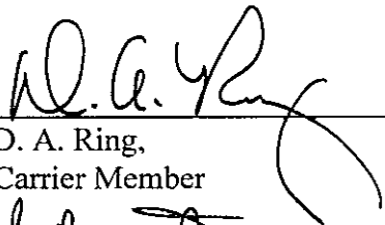
AWARD

Claim sustained.

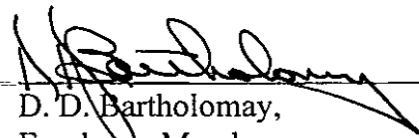
ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member


J. Desseant

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, January 29, 2001.