

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20183
Docket Number MW-20115

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement on March 27, 1971 when it assigned other than Truck Driver Leo Covarrubias to operate a truck used to transport scaffolding and paint from Helena, Montana to Livingston, Montana (System File MW-84(t)-8, 7/23/71).

(2) Truck Driver Leo Covarrubias be allowed eight (8) hours' pay at his straight time rate because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Claimant was one of two regularly assigned truck drivers assigned to B & B Crew No. 7 headquartered at Livingston, Montana, with a regular work week of Monday through Friday. On Saturday, March 27, 1971 some scaffolding and paint supplies which were located at Helena, about 123 miles away, were needed at Livingston. The other truck driver was called and asked to make the trip but he declined due to poor health. Whereupon, Carrier called on two members of Paint Crew No. 10 at Livingston, a Painter Foreman and a First Class Painter to make the trip. They used a pick-up truck for this purpose. Claimant was available but was not called. These facts are not in dispute, although Carrier is silent on the subject of the first call to the truck driver who turned down the assignment.

Carrier's contentions are: that Claimant has not established that he had the exclusive right to all truck driving at Livingston; that the alleged violation of Rule 34 (g) was a new issue not raised on the property and hence not properly before the Board; that seniority and classification rules do not per se restrict Carrier's assignment of work; and that truck drivers do not have the exclusive right to drive all types of trucks on this Carrier, particularly not light trucks.

With respect to the alleged impropriety of considering the contention of violation of Rule 34 (g), the record indicates that Petitioner cited Rule 2 and the entire agreement on the property. In Award 20042, involving the same parties, we said: "While the Organization cited Rule 40 on the property, the entire Agreement is before us and we may consider

other Rules as they may clarify that Rule." We concur in that reasoning. It was well expressed in a number of earlier Awards including Award 18808, 19519, and 19080; we particularly reiterate the position taken in Award 11644:

"It is true that generally, matters raised for the first time on appeal to this Board may not be considered. This does not apply to Agreements and agreed interpretations of such Agreements. Both parties are charged with full knowledge of applicable rules, agreements and interpretations. These are always proper for Board consideration whether they were or were not specifically presented and discussed on the property...."

Carrier cited a number of Awards in support of its position on exclusivity. In Award 13490, we considered a totally unrelated rule and factual circumstance; that decision is not relevant to this dispute. In Award 14305, the facts are clearly distinguishable in that the Claimant, a truck driver was regularly assigned to drive a 2½ ton truck whereas the pickup truck driven by the foreman in the incident in question was regularly assigned to the foreman. In Awards 15538 and 16641 Petitioner could not demonstrate that Claimants were regularly assigned to drive the truck and hence those Awards must be distinguished.

With respect to Carrier's argument that Truck Drivers do not have the exclusive right to drive all types of trucks, there is an allusion to some understanding on this issue, but the record is totally devoid of information confirming this. Further, there is no information in the record indicating that the Painters involved had ever driven any vehicles at any time, previous to this incident. We also note that Carrier does not explain why the first truck driver was called but not the second man, Claimant. We have stated before that overtime work is a condition of employment and unless specifically excluded it is to be deemed as part of the benefits of seniority (Award 19758).

On the issue of exclusivity, we have considered this matter in relation to work on unassigned days on numerous occasions. In Award 18856 involving the same parties as those herein and a related issue of work on an unassigned day, we held that reliance on the exclusivity concept was misplaced. Further we have taken the same position in Awards 17619, 18998, 19439 and many other Awards.

In this case we are not required to decide whether the work is exclusively Claimant's or anyone else's; once it is established that Claimant is a regularly assigned truck driver, holding seniority as such, and the Painters are not shown to be assigned to drive a truck, the claim must be sustained (Award 16253). The clear language of Rule 34 (g) is controlling.

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FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.