

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25964

THIRD DIVISION

Docket Number MW-25767

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railway Company (Southern Region)

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

(1) The Agreement was violated when machine operators from the Clifton Forge Division were used to perform machine operator's work on the Richmond Division on March 7 and 8, 1983 (System File C-TC-1717/MG-3952).

(2) Because of the aforesaid violation, Machine Operators F. E. Barker and W. T. Martin shall each be allowed sixteen (16) hours of pay at the Class 'A' machine operator's rate."

OPINION OF BOARD: There is no dispute that separate Seniority Districts are maintained under the Agreement between the Carrier and the Organization. Relevant here are the Richmond Seniority District (including the Rivanna Subdivision) and the Clifton Forge Seniority District (including the James River Subdivision). The dividing line between the two Districts is M.P. 120, with the Gladstone Yards extending from M.P. 117.07 to M.P. 120.13.

The Claim involves yard work in and around the Gladstone Yards allegedly performed by two employees assigned to the Clifton Forge Seniority Division on March 7 and 8, 1983. It is the Organization's claim that these two employees worked eight hours on each of these two days in work within the Richmond Seniority District. The Claim is in favor of two employees holding seniority in the Richmond Seniority District. The Carrier responds by stating that the work involved was performed on both sides of the line dividing the two Seniority Districts.

The Organization affirms its position as to seniority rights on Rule 2, Seniority, which reads in pertinent part as follows:

"(c) Limits. - Seniority rights of all employees are confined to the seniority district, groups, rosters, and classes in which seniority has been established as provided by Section (a) of this rule and by Rule 10. Groups, rosters, and classes are designated by Rule 3(a). Intergroup bidding and displacement rights are defined by Sections (f) and (h) of this rule.

(d) Territory Division Forces and Barbourville Reclamation Plant. - Seniority rights of division employees will be confined to the territory over which one Superintendent or other corresponding officer has jurisdiction . .

Other than the amount of work performed in the Richmond Seniority District, the Carrier disputes the propriety of the Claim on the basis that the Claimants were already under pay at the time the work was performed, one being employed elsewhere and one on vacation. The Board finds this an inadequate defense. Rule 2 specifically directs that seniority be "confined". To follow the Carrier's reasoning here would permit the indiscriminate use of employees in contradiction to the Rule. Where, as here, the seniority rights of employees are violated, a remedy is appropriate consonant with the violation involved, as established in a myriad of other Awards.

The Carrier further cites Rules 6 and 7, involving transfers on a temporary or permanent basis from one Seniority District to another. Whatever the application of such Rules, there is no showing that such is intended to contravene Rule 2. In any event, the incident here under review was not shown to be a "transfer" in any sense.

The Board is faced with a factual dispute as to the amount of work performed in the Richmond Seniority District by employees not holding seniority therein. The Carrier admits that work was performed on both sides of M. P. 120; the Organization has not made a convincing showing that the two cited employees worked all of two days outside their own seniority limits. While recognizing the existence of a Rule violation, the Board is necessarily constrained to modify the Claim on an arbitrary basis, in view of the lack of undisputed facts. Hence, each Claimant shall be allowed 8 hours pay at the straight time rate.

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 Employee involved in this dispute are respectively Carrier and Employee 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

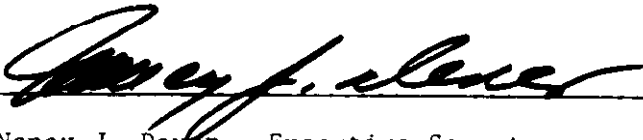
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.