Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9876
SECOND DIVISION Docket No. 9075
2-CRR-FO-'84

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Clinchfield Railroad Company

Dispute: Claim of Employes:

1. That the Clinchfield Railroad Company violated the Controlling Agreement, particularly Rule 1 Scope, when wrecker car attendant Laborer Buford Rogers, Erwin, Tennessee, was not called for wrecking service account of other employes used as wrecker attendant on the following dates: December 29, 1979 and December 30, 1979.

2. That accordingly the Clinchfield Railroad Company be ordered to compensate Laborer Buford Rogers in the amount of twenty-three and one-half (23 1/2) hours at punitive rate of pay for December 29, 1979 and December 30, 1979.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The basic issue in this case is similar, if not identical, to those faced by the Board in Award No. 8270. However, there is at least one important factual distinction which will be discussed below.

In Award 8270 the Board found the Claimant had a limited but not exclusive right to the work in question. The Board stated in pertinent part:

"From the record this Board concludes that the grievant, by past practice, is entitled to the same rights he held prior to the 1975 assignment. In so doing we rely upon that portion of the scope rule which reads:

'It is agreed that present assignments of work which have been in practice for a number of years will continue in effect unless changed by mutual agreement or in accordance with the Railway Labor Act.'

Neither party to this disagreement advances a clear record of past practice in the area under consideration. It is clear, however, that the grievant had been used in the position on numerous occasions and was entitled to some consideration. The record also indicates that laborers from other

classes and crafts had been utilized on occasions when the need or emergency required such utilization. Consequently, we find that the organization has failed in its requirement of proof that past practice was violated in the assignments filled by other laborers. However, we admonish the carrier that absent any understanding as outlined in that portion of the scope rule quoted previously, it must adhere in a reasonable manner to the assignment of work as outlined by past practice.

Based on the entire record, this Board concludes that the utilization of supervisors and laborers from other carriers does not conform to normal past practice and the claimant should have been utilized on those assignments where such individual performed the work."

Based on its analysis, the Board made the following award:

"Consistent with the findings the claimant shall be awarded eighteen (18) hours of pay as claimed. These hours consist of eight (8) on September 10 worked by a supervisor and ten (10) hours on September 17 worked by an employee of another carrier."

The instant case and four others had been held in abeyance pending the results of Award 8270 and the parties were in agreement that the instant case, along with the others, would be governed by the Award in Award 8270. Subsequent to the issuance of the lead award, the parties could not agree as to how to apply it to the instant set of facts. The instant case was then appealed to the Board.

It is clear that the Board in Award 8270 sustained the claim only to the extent of finding a violation of the agreement when supervisors or employees of other Carriers performed the work in question. The Board did not find any violation in regard to the performance of work by other craft employes of the Carrier. A further review of Award 8270 fails to reveal any basis for this Board to modify our holdings there.

Applying the principles set forth in Award 8270 to the instant facts, it is concluded that no violation of the Agreement occurred. There is no dispute that in this case supervisors or employes from another Carrier did not perform the disputed work. This is the important distinction between this case and Award 8270 mentioned above.

In view of the foregoing, the claim must be denied. It is noted this decision is consistent with Award 9754 and 9755 issued by this Division with Referee Marx participating. These two cases were also being held in abeyance pending the outcome of Award 8270 and have identical facts to the instant case.

In view thereof, the claim must be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984