

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { System Federation No. 44, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Clinchfield Railroad Company

Dispute: Claim of Employees:

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 employees used as wrecker car attendant on the following dates, September 10, 1977; September 17, 1977; October 15, 1977; October 21, 1977; November 13, 1977 and November 15, 1977.
2. That accordingly, the Clinchfield Railroad Company be ordered to compensate Laborer Buford Rogers in the amount of thirty-one (31) hours at punitive rate of pay for September 10, 1977; September 17, 1977; October 15, 1977; October 21, 1977; November 13, 1977 and November 15, 1977.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claimant is a laborer working for the carrier at Erwin, Tennessee. At the time of the claim, he was working in an assignment awarded to him on November 20, 1975. His duties included cleaning, servicing, and supplying cabooses for Road Service. In addition to such position, he had another function stemming from a successful bid in 1958 to a position as Shop Laborer for wreck service. The latter service was an on-call service whenever the need arose. The carrier takes the position that the November 20, 1975, position which arose as a result of a job abolishment also discontinued his services on the wrecker assignment. The record indicates, however, that prior to this date Mr. Rogers had fulfilled both a job assignment and an on-call position to perform work on the wreck service. These dual responsibilities continued after the November 20, 1975, assignment up until the actions by the carrier which gave rise to the grievance under consideration.

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.

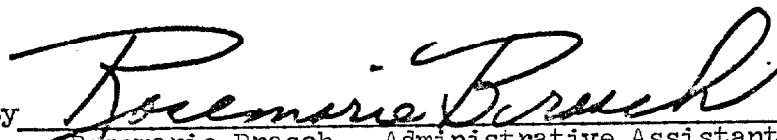
A W A R D

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of March, 1980.