

Award No. 13282
Docket No. MW-13032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) Carrier violated the agreement beginning with October 17, 1960 when it assigned other than section forces to supply cabooses at Missoula, Montana.

(2) Sectionman D. C. Forsyth be allowed 8 hours' pay at his straight time rate for each day beginning with October 17, 1960 on which other than section forces are used to supply cabooses at Missoula, Montana.

EMPLOYEES' STATEMENT OF FACTS: The claimant holds seniority right as a Sectionman in Group 14 of the Track Department.

For a period of more than thirty-five years, the work of supplying cabooses at Missoula, Montana was assigned to and performed by Sectionmen holding seniority in Group 14.

Beginning on October 17, 1960, the Carrier unilaterally assigned the work of supplying cabooses to Car Department employees who hold no seniority under the provisions of this agreement.

The Agreement violation was properly and timely protested and claim filed in behalf of the claimant and progressed through all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated April 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

allowed on the basis of Helper's rate of pay since that is the lowest rated class of employees covered by the Agreement. It should be on a pro rata basis and only to the extent of the time actually worked by the contractor's employees in performing it."

Additional awards recognizing the principle that the penalty for improperly removing work from the scope of an agreement is the number of hours of work removed from the agreement computed at straight time rate are Nos. 3061, 3193, 3232, 3488, 3587, 3745, 3955, 4244, 4467, 4760, 5782, 5841, 5950, 5952, 6760 and 8534 of this Division.

As before stated, the length of time consumed by carmen in supplying cabooses between the hours of 8:00 A. M. and 5:00 P. M. from Monday through Friday did not exceed two hours. Therefore, applying the principle propounded by this Division in cases where work has been improperly removed from an agreement, the penalty accruing would be payment at straight time rate for the length of time consumed by carmen in supplying cabooses.

The Carrier has shown that:

1. The work of supplying cabooses is insufficient to warrant the establishment of a position primarily for that purpose.
2. The work of supplying cabooses is performed by employees incident to their regular duties.
3. The work of supplying cabooses at Missoula has never been recognized as the exclusive work of Track Department employees.
4. Universally the work of supplying cabooses is not recognized as the exclusive work of any particular class of employees.
5. *Track Department employees did not supply cabooses at Missoula prior to October 17, 1960 on Saturdays and Sundays.*
6. Not to exceed two hours per day from Monday through Friday is consumed by carmen in supplying cabooses at Missoula.
7. D. C. Forsyth retired on March 1, 1961.

Based upon the facts, the rules of the April 1, 1952 Agreement and the practice thereunder, the claim covered by this docket should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees argue that a more than thirty-five year practice at Missoula, Montana, of Sectionmen covered by the Agreement being assigned the work of supplying cabooses, reserves such work at Missoula to employees covered by the Agreement. Employees rely on Rule 1, Rule 2 and a supplemental letter Agreement dated February 11, 1952.

The work of supplying cabooses is not referred to in any of these or any other rules in the Agreement; nor can it even be found in the job titles by inference. Employees rely entirely on past practice to establish title to the involved work. But the record shows conclusively that the practice both on the system as a whole (which Carrier argues is the proper reference), and at

Missoula alone (which Employees claimed originally as the reference), was to assign the involved work to employees covered by Agreements of a number of different crafts. Even if the area of reference for the consideration of practice were narrowed still further, as later argued by Employees, to a majority of time on one particular five day position, Employee's evidence falls short of proving the practice conclusively. We shall therefore deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.