

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19754**
Docket Number NW-19709

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The Agreement was violated when

(a) General **Roadmaster** W. R. Shoaf and Track Supervisor A. Sheehan patrolled track on the "B" Branch on November 27, 1970.

(b) General **Roadmaster** Shoaf and Track Supervisor L. **Cornwell** patrolled track on the "A" Branch on November 28, 1970.

(c) Track Supervisor L. **Cornwell** patrolled track on the "A" Branch on New Year's Day week-end, January 1971. (System Files 1, 2 and **3/MW-2-72**)

(2) As a consequence of the above

(a) Section Foremen John Keys, L. **W.** Pearson, V. L. Nesbitt, and Lester **Whicker**; Section **Laborers** Richard Lovely, W. R. Jones, L. E. Nease, F. **Whitlock**, Harold Nesbitt, B. L. Martin, J. H. Hughes, R. Jackson and W. Wright be allowed four (4) hours' pay at their respective time and one-half rates and that Ernest Smith be allowed two (2) hours and forty (40) minutes' pay at his time and one-half rate because of the violation referred to within Part (1-e) of this claim.

(b) Section Foremen Cy Hughes, R. C. Lovell, W. **B. Buntain** and Section Laborers R. D. Lovell, C. Lovely, A. F. Sobeaki and F. M. Cusick be allowed four (4) hours' pay at their respective time and one-half rates and that Ernest Smith be allowed two (2) hours and forty (40) minutes' pay at his time and one-half rate because of the violation referred to within Part (1-b) of this claim.

(c) Section Foremen R. C. Lovell, W. B. **Buntain** and Section Laborers F. E. Frank, C. V. Peregrine, O. M. **Leitzow**, R. D. Lovell, C. Lovely, A. F. Sobeski and F. M. Cusick be allowed four (4) hours' pay at their respective time and one-half rates and that Section Foreman H. Bush be allowed two (2) hours and forty (40) minutes' pay at his time and one-half rate because of the violation referred to within Part (1-c) of this claim.

OPINION OF BOARD: The dispute before US **is** one of contract **interpretation**. Petitioner has alleged that Rule **53(2)** of the **basic** Agreement between the parties **was** violated when **a** General **Roadmaster** end **a** Track Supervisor performed certain work alleged to be **exclusively** work belonging to the employees covered by the Scope Rule in said Agreement. Rule **53(2)** says, in pertinent part:

"The work of Roadway end Track employees will consist of ********* patrolling end watching **track** and **roadway**; *********."

Claimants were assigned to work **Mondays** thru Fridays (excluding holidays), with Saturdays end Sundays designated as rest days. Pursuant to **an** Agreement between the parties, dated December 9, 1966, the day following Thanksgiving Day **was** substituted as **a** holiday in lieu of the employees birthday **holiday**. This arrangement created a four day period, Thanksgiving Day thru the following Sunday, when none of the claimants were assigned to work. **On** the Friday end Saturday following Thanksgiving, 1970, end again over the New Year's Day weekend, 1971, the General **Roadmaster** end the Track Supervisor (in the first instance) end the Track Supervisor (in the second instance) are alleged to **have** performed work in violation of the aforementioned Rule **53(2)** in that they patrolled the track over the territories referred to in the **claims**.

Petitioner submits that Rule 53 is **a** delegation of work Rule which, by its very language, describes that work reserved to end **customarily performed** by track forces, to the exclusion of non-contract employees. Petitioner stated, "Since the foremen end his **gang** are **charged** with the responsibility of **maintaining** the track in a safe condition, they are obviously required to patrol **same** in order to detect loose end/or missing bolts, broken rails end angle bars, etc." Petitioner **avers** that this is precisely the work that **was performed** by the supervisory employees herein involved, **a detailed** inspection. The Carrier, on the other hand, readily admits that its supervisors made certain **trips over** the territory in question, in **a** hi-railer, but that such trips were **not** what could be classified as "patrolling" track. Rather, Carrier maintained that "They merely made a trip over their respective territories to see the general condition, progression of work, etc., as they have always done in order to allocate their forces end in line with their continuing responsibilities as supervisors." Carrier further stated that none of the claimants would have been qualified or authorized to perform the supervisory duties that were actually performed.

Other than the foregoing type of generalization, replete with assertions and counter-assertions, there appears to be nothing in the record of the handling on the property or in the partisan submissions to this Board that could be construed to be of probative value. It is also interesting to note that, other than the exchange of correspondence between the **parties** identifying the claims and denying same, the handling on the property consisted of one conference concerning this matter. This would hardly seem indicative of an effort by the **parties** "to exert every reasonable effort to **make** and maintain agreements concerning rates of pay, rules, and working conditions" and, if possible, to decide all disputes "in conference between representatives designated and Authorized so to confer" as contemplated by Section 2, First and Second of the Railway Labor Act, as amended.

Notwithstanding the foregoing, Petitioner **asserts** that the **language** in Rule 53(2) regarding "patrolling" is clear and unambiguous and **delegates** such work exclusively to the employees covered by the Scope Rule of the Agreement, which the Carrier has not successfully rebutted. This position of exclusivity, per se, is not the issue before us. The issue that this Board is asked to rule on is whether the supervisory personnel involved performed work that should have been performed by contract employees or, stated another way, did the supervisory personnel actually make an inspection trip over the territory involved, which is part of their normal duties, or did they "patrol" the track as contemplated by the Rule in question. On this point we have before us merely assertions: Petitioner alleging that the supervisors "patrolled" and the Carrier alleging that the supervisors "inspected." It is an **uncontroverted** fact that supervisors do inspect their assigned territories, and do so as part of their overall responsibilities. The extent, if **any, that** the supervisors in this **case** "patrolled" in addition to their overall responsibilities of inspecting has not been demonstrated by the record before us.

Award 17334 (Brown) stated, in part:

"It would be speculation on our part to supply the necessary inferences to support the Organization's position. Inferences may properly be drawn from **uncontroverted** evidence, but the basic **case** may not be supported by inferences alone."

Additionally, Award 18061 (Dugan) stated in part:

"As we have often said the burden **which a** Petitioner bears to satisfy the principles is harsh. However, the many **years** ancestry of the principles **must** be honored in the interest of uniformity and stabilization throughout the industry. Be there any who find the principles repugnant - and we know there are some - their remedy lies in collective bargaining."

Upon the record, **as** made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the claims.

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 upon the record made on the property we **are** unable to **adjudicate** the **merits** of the claims.

A W A R D

Claims **dismissed**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.