

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20187
Docket Number MW-20163

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of **Maintenance** of Way **Employees**
(Illinois Central Gulf Railroad
((Former Gulf, Mobile & Ohio Railroad)

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

(1) The Carrier violated the Agreement when, on **March 18**, 25, 26, April 1, 2, 8 and 9, 1972, it called and used Foreman F. W. **Brown** (and one of his laborers on **March 18**, 1972 only) instead of Section Foreman H. H. Garrison and Section Laborer B. **Darnell** to inspect track assigned to Section 140 **Humbolt**, Tennessee (Carrier's File E-41-165).

(2) Section Foreman H. H. Garrison be allowed twenty-one (21) hours of pay at his **time** and one-half rate and Section Laborer B. **Darnell** be allowed three (3) hours of pay (for **March 18**, 1972) at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimants are **regularly** assigned to Section 140 (**Humbolt**, Tennessee) as Section **Foreman** and Laborer. **Their** work days are **Monday** through Friday, with rest days of Saturday and Sunday.

On seven dates in March and April, 1972 (which dates were rest days for Claimants) Carrier assigned another Section Foreman and another Laborer to patrol and inspect track which included the regularly assigned territory of Claimants. Each instance consumed three (3) hours.

Claimants allege a violation of Rule **6-A(k)**:

"Where work is required by the Carrier to be performed on a day which is not part of any assignment, it **may** be performed by an available extra or unassigned **employee** who **will** otherwise not have 40 hours of work that week; in all other cases by the regular **employee**."

The Organization argues that Claimants are regularly **assigned** to the particular section territory. The Claimants regularly perform track patrolling and inspection work on their regularly assigned work

days, and they would have performed the work in question, if required, during the regular work week. Thus, the Organization concludes that the Claimants are the "regular employees" within the meaning, intent and purpose of the above cited Rule.

Carrier's principal argument is that the Agreement fails to reserve to Claimants the "exclusive" right to patrol and inspect track over their regularly assigned territory on the dates in question. In this regard, Carrier alleges that both supervisory personnel and other Section Foremen have patrolled and inspected track over other section territories at other times.

But under this record, exclusivity is not the issue for determination since the work in question was assigned by Carrier to a Section Foreman on the dates in question. Rather, the question is one of seniority and the "regular employee" under Rule 6-A(k).

This Board has previously distinguished between supervisory inspection by Carrier Officials and normal responsibilities of Section Foremen to patrol and inspect regularly assigned territory. See Awards 13073 (House) and 4946 (Carter).

Moreover, the issue of work on unassigned days has been before this Division on numerous occasions, and the Awards have upheld the regular incumbent's right to the work without necessity of proving exclusivity. In reply to a similar defense that Claimants must prove exclusive right to the work in dispute, this Board, in Award 19439 (O'Brien) held:

"See, for example, Awards 12957, 18245, 18856 and 19039 upholding the regular **incumbent's** right to the work on unassigned days **without** proving exclusivity of the involved work."

See **also Award** 20041.

There were no furloughed or extra employees available to perform the inspection work **in** question; which work is performed by Claimants on Mondays through Fridays. Accordingly, under Rule 6-A(k) Carrier was required to utilize the services of Claimants on the rest days in question.

We will therefore sustain the claim and allow Section Foreman Garrison twenty-one (21) hours **of** pay at his time and one-half rate, and allow Section Laborer **Darnell** three (3) hours of pay at his **time** and one-half rate.

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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 Employes involved in this dispute are respectively Carrier and Employes 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.

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Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.