NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20424
THIRD DMSION Docket Number MW-20538

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Nay Employes
(Louisville and Nashville Railroad Company

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

(1) The Carrier violated the Agreement and practices thereunder when it used Foreman J. B. Loyd instead of Track Repairman T. Harris to "watch track" from 8:00 P.M. on September 26,1972 until 9:00 P.M. on September 27, 1972 at MP 310.2, Birmingham Division (System File 1-16/ E-304-12 304).

(2) As a consequence of the aforesaid violation, Track Repairman T. Harris be allowed pay at the track repairman's rate as follows:

9-26-72
8:00 P.M. to 11:00 P.M. --- 3 hrs. time and one-half
11:00 P.M. to 12:00 M --- 1 hr. double time

9-27-72
12:00 M to 7:00 A.M. --- 7 hrs. double time
7:00 A.M. to 4:00 P.M. --- difference between the double time rate and the straight-time rate
4:00 P.M. to 9:00 P.M. --- difference between the double time rate and the time and one-half rate.

OPINION OF BOARD: The dispute herein originated in the repair of track September 26,1973 following a derailment. After the track was repaired the for- elected to remain on duty to perform duties as watchman, until relieved on September 27th. Petitioner alleges that the senior track repairman should have been used as watchman and that the Agreement was violated by the work being performed by the foreman.

Petitioner relies primarily on the Agreement in support of its contention. Rule 5 establishes six different and distinct classifications of employes in the Track Subdepartment ranging from Rank No. 1 Foreman to Rank No. 6 Track Repairmen. Rule 30(f) provides that the senior available men shall be given preference in the assignment of overtime work on their home sections. The Organization also asserts that on this property track repairmen have historically been used to watch track and foremen have not been used for such service.

From the inception of the Claim on the property Carrier stated that the duties of watchingtrack may be assigned to any employes assigned to the section and are not the exclusive work of track repairmen.

It is clear that the Agreement itself &es not assign the work of watching track to any single classification; in fact we find no mention of this task in the Agreement. It is then incumbent on Petitioner to establish by probative evidence that the work of watching track has been historically, customarily and exclusively performed by the track repairmen, in order to sustain its position. The Organization has offered assertion of past practice but no evidence whatever in support of its assertions. It has long been established by this Board that unsupported assertions do not constitute proof (See Award 18471, for example).

Since the record shows that the Agreement does not support the Claim and that the Organization has failed to sustain its burden of proof, we must deny the Claim.

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 inwlved 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.