NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21717
THIRD DIVISION Docket Number MW-21748

James F. Scearce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Colorado and Southern Railway Company

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

(1) The Agreement was violated when, on March 28, 1975 (Good Friday), other than track forces were assigned or otherwise permitted to clean ice and snow from switches at Cheyenne, Wyoming (System File C-8-75/MW-369).

(2) Section Foreman J. E. Garcia, Trackmen J. G. Lujan, T. M. Lucero and S. F. Hernandez each be allowed eight (8) hours of pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: On March 28, 1975 (Good Friday--a railroad holiday). by 6:30 a.m., two notices had been issued by the authorized management representative of the carrier as follows:

(1) "CHEYENNE, WYOMINGAND DENVER, COLORADO
ALL CONCERNED - CHEYENNE YARD...
DO NOT CALL SECTION MEN IN AT CHEYENNE AT
ALL TODAY
THEY ALREADY HAVE TOOOOOOOO MUCH OVERTIME."

(2) "DO NOT CALL SECTION MEN TODAY TO CLEAN SWITCHES"

During that day or possibly carrying over from the preceding day, a snowfall of some consequence fell in the affected area, making it necessary that snow removal be carried out to clear switches of ice and snow. Switchmen were used from 2:30 p.m. to 10:30 p.m. on that date to accomplish this work, in addition to their other duties. Since this was a holiday, the appropriate rate of pay was time and one-half the regular rate.

The Petitioner argues that, had the section forces been called in on that date, they would have effected such snow and iceremoval--the Carrier concedes as much. The Petitioner also claims that absent the two aforementioned notices, section forces would have been called on that date.

The Carrier asserts that train and engine crews must be able to clear switches in cases of emergency and incidental to their regular assignments, so as not to delay train movement. This issue has been dealt with by other Boards in numerous similar situations, generally upholding such emergency or incidental work where necessary. However, under the particular facts and circumstances of this case'there was an obvious predetermination to deny work to the entire section crew, no matter what the situation might be.

The two notices issued early on the date of March 28, 1975, are significant in this case. They represented a foreclosure of the rights to work for the section crew, based upon an economic judgment ("too. . ..much overtime") rather than an assessment of the scope of work to be performed. The Carrier violated the rights of the appropriate section forces.

We find basis for a claim to the extent of a minimum call of two (2) hours and forty (40) minutes per Rule 21(d) of the Agreement.

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

The agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.