

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21854
Docket Number MW-21757

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific
Railroad company

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

(1) The Carrier violated and continues to violate the Agreement when, beginning October 14, 1974, instead of celling and using Caboose Supplyman P. A. Esposito to service cabooses on his regularly assigned work days, it used employees outside the scope of the Agreement and who did not theretofore perform service of that character at Savanna, Illinois (System File C# 49/D-1834).

(2) Caboose Supplymen P. A. Esposito be compensated at his time and one-half rate for all time consumed by P.F.I. men servicing cabooses on his regularly assigned work days continuing until the aforesaid violation is discontinued.

OPINION OF BOARD: As of Friday, October 11, 1974, Claimant had occupied the job of Caboose Supplyman since the job was bulletined on May 10, 1968. His regular hours were 7:00 a.m. to 3:30p.m., Monday through Friday. It is uncontested that the duties performed by the Claimant had historically been accomplished by employees represented by the Brotherhood of Maintenance of Way Employees at the Carrier's Savanna, Illinois, facility.

On October 11, 1974, work beyond the regular hours of the Claimant relative to caboose supply work was assigned to Perishable Freight Inspectors (PFI), represented by the Brotherhood of Railway...Clerks.

The Organization argues that the work of caboose supply has been historically that of Track Sub-department forces; that the Carrier recognized this when it bulletined and assigned the job to the Claimant in 1968 and that it cannot now arbitrarily remove such work from jurisdiction of the BMW; it demands compensation for the Claimant and the appropriate rate for overtime for all time worked by the PFI men.

The Carrier contends that the Organization must demonstrate **exclusive** jurisdiction to such work System-wide to substantiate its **claim**. While **granting** that caboose supply work at Savanna is performed by employees represented by the **BMWE**, the Carrier points out that such work is performed variously by employees represented by other Organizations exclusively at other locations; that such work is performed by outside contractors at some locations; by employees represented by more than one Organization at other locations; **and**, by a mixture of contractor and employees represented by Organizations at even **other** locations. (These contentions are not **contested** by the Organization.) It points out that its agreement with the **BMWE** is System-wide and, as such, its claim on this work must be demonstrated to also extend System-wide.

The Organization disputes the Carrier's contention that the "exclusivity doctrine" applies here. Its claim, instead, is that Track Sub-department forces have **traditionally**, customarily, **historically** and exclusively performed this work at the **Savanna** facility.

We **find** the key issue here to be precisely the questions:

Is the fact that track Sub-department forces have **historically**, **customarily**, traditionally and exclusively performed the duties of caboose supply at the Savanna facility controlling over the assignment of overtime after regular hours of the **Claimant**?

OR

Must the Organization prove its right to this work by demonstrating System-wide exclusive jurisdiction or point to specific reference to such work in its Agreement with the Carrier?

We **are** persuaded that the facts support the latter in view of past Awards. While it is true that track Sub-department forces performed such work exclusively at **Savanna**, the **Carrier** established its right to such work performed elsewhere on the System in a large variety of combinations **and** permutations of members of the work force including mixtures of different crafts **and** outside contractors.

It is well established that when an Agreement is System-wide, the Organization, to substantiate a claim, must evidence its right to such work on the same basis System-wide. The Organization **cannot** point to provisions of the Agreement to substantiate its right to this specific work. Rule **46-CLASSIFICATION** is devoid of reference to this work and its SCOPE Rule (Rule 1) is **general** in nature.

To give credence to the Organization's claim here would be to ignore the bedrock concept of System-wide jurisdiction by an Organization where it has been established, and management's right to direct the work force where such jurisdiction is not established.

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

The Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.