NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25177

THIRD DIVISION Docket Number MW-25078

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it assigned Car Department forces and a brakeman instead of Track Department forces to perform track work at Price Mine from 4:00 P.M. December 15, 1981 to 1:00 A.M. on December 16, 1981 (System File C-TC-1241/MG-3335).

(2) Because of the violation referred to in Part (1) hereof, Foreman H. B. Hurley, Jr. and Trackmen D. Howell, Jr., 0. Howell and L. D. Wallen shall each be allowed eight (8) hours of pay at their respective time and one-half rates and one (1) hour of pay at their respective double time rates.

OPINION OF BOARD: On December 15, 1981, there was a derailment on the Price Mine track at Mile Post 14.6 on the Long Fork Sub-division in Price, Kentucky. The derailment blocked Carrier's main line and disrupted the traffic from the Long Fork and Clear Creek Sub-division.

Carrier determined that it was necessary to repair the damaged track in order to rerail and move the derailed train. Carrier called Car Foreman Stone, Car Inspectors Park and Caudill and Brakeman Osborne to the scene. They worked from approximately 4:00 p.m. to 1:00 a.m.

The Organization contends that Trackmen should have been called to the derailment. It asserts that track maintenance work is reserved to Track Department forces. The Organization seeks eight hours pay at time and one-half and one hour at double time for Claimants Foreman H. B. Hurley, Jr., Trackman D. Howell, Jr., Trackman 0. Howell and L. D. Wallen. The Organization cites several Agreement rules to support its contention.

The disputed work was the driving of one spike in the joint and one spike into a switch point. The Organization asserts that this work is reserved to it.

Carrier disagrees with the Organization's position. It asserts that the disputed work took fifteen minutes and that it was incidental to the rerailing of the train. Moreover, it insists that the Organization has failed to bring forth any probative evidence to support its assertion that any rules were violated.

We have carefully evaluated the Organization's arguments regarding the alleged rules violation. Based upon that review, we conclude that the Organization has failed to shoulder its burden of establishing all of the essential elements necessary to show that Carrier violated the Agreement. Since the Organization has not met its burden of proof, as described in many Awards of this Board (see for example Third Division Awards 20943 and 19331), we have no choice but to 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1984.