

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25358
Docket Number MW-25283

Eckehard Muessiq, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned Track Department employes instead of Bridge and Building Department employes to dismantle a slide detector fence between M.P. 304.1 and 304.5 on February 18, 19 and March 5, 1982 (System File C-TC-1357/MG 35021.

(2) Because of the aforesaid violation, B&B Foreman L. W. Anglin and B&B Mechanics C. J. Akers, L. C. Rowan, L. B. Fowler, M.W. Patterson and R. E. Ballinger shall each be allowed twenty-four (24) hours of pay at their respective straight time rates.

OPINION OF BOARD: This dispute came about after the Carrier assigned the work of removing a slide detector fence adjacent to a portion of a "dual" main line track to an AFE Retirement Gang. This track had been retired in 1974. The Organization contends that the removal work was within its jurisdiction and should have been so assigned.

The Carrier, in its denial of the claim, essentially relied upon numerous past Awards which held that work on facilities owned by the Carrier, but used for purposes other than the operation of the Railroad, do not come under the Scope of the Agreement. Moreover, the Carrier contends that the Organization, in its Ex Parte Submission to the Board, has objected for the first time to the Carrier's assertion that the disputed work was performed on property no longer in operation and the assertion that the Claimants already were engaged in other program work at the time the fence was removed. Consequently, they were not available to perform the tasks under dispute,

The Board finds that these latter issues were not contested on the property and, therefore, stand unrefuted. Accordingly, with respect to the basic issue as to the assignment of the work, under the facts and circumstances properly progressed to this Board, we join a long line of Awards that have found that work on Carrier facilities which are used for purposes other than the operation or maintenance of the Railroad, do not come under the Scope Rule 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 **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**

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. Decker - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.