

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25492
Docket Number MW-25629

M. David Vaughn, Referee

(Brotherhood of **Maintenance** of Way **Employees**
PARTIES TO DISPUTE: (
(Peoria and Pekin **Union** Railway Company

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

"(1) The Agreement was violated when, on September 22 and 23, 1982, the Carrier used Track Patrolman Sturgeon and Track Supervisor Stone to perform track work in connection with a derailment at Peoria, Illinois instead of using **Trackmen** D. C. Clubs and **J. M. Silva, Sr.** to perform such work (System File **PPUT-3499/TC 60-82**)

(2) Because of the aforesaid violation, **Trackman** D. C. Clubs shall be allowed sixteen (**16**) hours of pay at his straight time rate and **Trackman J. M. Silva, Sr.** shall be allowed eight (**8**) hours of pay at his straight time rate:

OPINION OF BOARD: The Organization, on behalf of two named Claimants, makes a Claim for pay time lost as a result of Carrier's assignment of certain track repair and maintenance work in Peoria, Illinois to two supervisory employees.

On September 22, 1982, Carrier assigned Track Patrolman Sturgeon to adjust switches at "**A Yard**" near Peoria, Illinois for eight hours. On September 23, 1982, Carrier assigned Track Patrolman Sturgeon **and** Track Supervisor Stone to perform track work in connection with a derailment in the vicinity of Sloan Street at Peoria, Illinois, which required sixteen man-hours to complete.

The Organization filed a Claim for pay for the work, which the Carrier declined. The Claim was then brought before this Board.

The Organization asserts that the Carrier's action violates the Scope provisions of the agreement between them. Rule 1 of the agreement states:

"**The** rules contained herein shall govern the hours of service, working conditions, and rates of pay of all employees in the several sub-departments of the **Maintenance** of Way and Structures Department. This Agreement shall not apply to the following:

(a) Supervisory forces above the rank of foreman.

(b) Clerical and Engineering forces.

(c) Employees in the Signal, Telegraph, and Telephone Maintenance Departments.*

Additionally, Rule 39 of the **Agreement** states in part:

"(i) All work covered by the scope of this agreement shall be performed by employees covered therein, except that certain jobs may be contracted to outside parties which the Railway is unable to perform because of lack of **proper** equipment, insufficient or qualified forces:

The question to be decided in this case is whether supervisory employees outside the craft performed **work** reserved by the scope rules to employees covered by the **Agreement**.

The Organization maintains that the **work** in question was 'traditionally and **customarily**' assigned to employees covered by the cited scope rules and that the assignment thereof to the Track Patrolmen and Track Supervisor, who are excluded from the **Agreement** by virtue of Rule 1(a), was in violation of the **Agreement**.

Carrier argues that the scope clause is a general one, containing no job descriptions or guarantees of assignment to specific tasks, and that the burden is, therefore, on the Organization to prove that the disputed work has been historically performed exclusively by employees covered by the **Agreement**. Carrier further argues that it has been past practice on the property that track inspectors perform work that could be completed by one **or** two individuals, such as the work performed by the Track Inspector on September 22, 1962. According to Carrier, the repairs of September 23, 1982, are also consistent with this practice because the **track** supervisor merely assisted the track inspector in work which historically has been performed by employees occupying that position.

The Scope Rule in the **Agreement**, neither listing job positions nor describing the work to be performed, is clearly a general scope rule. The Board has repeatedly held that in order to establish rights to particular work under a general scope rule, the Organization must establish by probative evidence that employees covered by the **Agreement** have in the past performed the dispute work to the exclusion of all **others**. See Third Division Award 14507 and Third Division Award 21479. In this dispute, the Organization asserted that the work belonged exclusively to its employees, but offered no evidence in the record to support its contention. The Board holds that, in this case, in which a general Rule forms the contractual basis for the Claim, the Organization has failed to meet its burden. Accordingly, the Claim must be, and it is, denied.

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. Lever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of May 1985.