

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25991

Docket Number MW-25486

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when, on May 29 and 30, 1982, it assigned or otherwise permitted Roadmaster C. E. Humbert and Track Supervisor A. Ybarra to unload ballast in the vicinity of Third District Mile Post 92 instead of calling and using Trackmen J. L. Gilpin, R. L. Buckle, S. M. Koch, B. J. McCoy and T. A. Elmore for such service (System File 40-1-825/11-1940-220-8).

(2) Trackmen J. L. Gilpin, R. L. Buckle, S. M. Koch, B. J. McCoy and T. A. Elmore shall each be allowed three (3) hours of pay at their respective rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On Saturday, May 29, 1982, a passing train crew noticed a slide at Mile Post 92 and notified the Station Operator at Ottawa, Kansas who in turn contacted Track Supervisor Ybarra at 1:30 P.M. Ybarra reported this to Roadmaster Humbert who decided to dump ballast which was already enroute. The ballast was dumped at 4:00 P.M.

On Sunday, May 30, 1982, Humbert was informed the slide re-developed. He called Ybarra at 10:30 A. M. Ybarra investigated and reported that conditions had worsened. At 1:00 P.M. rock was again dumped. Humbert stated the dumping took 15 minutes on each occasion.

In its claim letter of July 13, 1982, the Organization maintained this action by Humbert and Ybarra "violated the scope and assignment provisions of our Agreement." Rule 1, the Scope Rule, need not be quoted in full. It is concededly general in nature and states in pertinent part:

"This agreement governs the hours of service, wages and working conditions of employees of the following classes in the Maintenance of Way and Structures Department . . . and such other classifications as may be shown in the appended wage scale or which may hereafter be added thereto."

In excess of thirty classifications, Trackmen but not Track Supervisor or Roadmaster are listed. The Wage Appendix sets rates for the Trackmen and Track Supervisor classification but not for the Roadmaster position.

The Carrier contends that as the Scope Rule is general the Organization has the burden of establishing its members have historically performed the work to the exclusion of all others including supervision and has failed to do so. The Organization argues that inasmuch as Trackmen are specifically named in Rule 1 as well as in the Wage Appendix it is a clear expression of intent that certain work would accrue to that position, citing Third Division Award 7050 to the effect that:

"Although titles are an uncertain guide to what the actual duties are, some types of work clearly fall under an occupational title according to ordinary, common understanding."

It is necessary to keep in mind precisely what is at issue. This is not a case in which work has been assigned to employees of one craft, classification or Organization as opposed to employees of another craft, classification or Organization nor is it a case in which work has been subcontracted to employees of an employer other than the Carrier. Rather we have a situation in which supervisory personnel of the Carrier performed work claimed by the Organization to be work reserved to its members by the Agreement. In this situation we find applicable Third Division Award 15461 which held:

"The applicable Scope Rule in the instant dispute is general in nature, and would not afford an exclusive claim on behalf of clerks to ticket selling duties and related clerical work if the question before us involved the performance of such work by telegraphers or other employees subject to labor agreements. However, Carrier here assigned such routine clerical work which is normally performed by employees subject to the Clerks Agreement to supervisory employees, who are not covered by any collective bargaining agreement"

The Carrier argues an emergency situation existed which excuses any possible violation. We agree with the Organization that the evidence does not establish an emergency nor do the time sequences involved suggest the Carrier treated the situation as such. The Carrier is correct in asserting that what Claimant has identified as "Letter No. 1" (dealing with the availability of claimants and the distance of their home from the work site) was not presented on the property and should be disregarded. We have disregarded it as not being proper before this Board. We do note that on August 11, 1983, the General Chairman of the Organization denied the evidence established an emergency and stated all Claimants save one lived closer to the trouble spot than did the Roadmaster or Track Supervisor. We cannot therefore find the Organization failed to contest the claim of emergency in handling on the property.

The Carrier, argues the Organization, at no time took issue with its position that the Claim is excessive and cannot do so now. It bottoms this Claim on a statement it furnished the Organization from Humbert alleging that it took 15 minutes each day to dump the ballast. At most, according to the Carrier, the de minimus doctrine applies.

The Board is unable to agree the Organization is raising a new issue in arguing time spent in transit and waiting should be considered. It has claimed three hours per man throughout. The Board does agree the Claim is excessive to the extent it seeks 3 hours wages for 5 named Claimants. The evidence shows that 2.5 hours elapsed from the time of notice until the time of dumping the ballast on both May 29 and 30, 1982. Two men, Humbert and Ybarra, were involved. We will therefore require that the two Trackmen who would have been entitled to be called be reimbursed for two and one half hours work at whatever rate they would have received under 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1986.