

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26430
Docket Number XW-26312

Elliott H. Goldstein, Referee

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

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

(1) The Carrier violated the Agreement when it used a **N&W employe** to provide flag protection for the safe passage of trains between Mile Post 1 and Mile Post 2 on January 3, 4 and 5, 1984 (System File C-TC-2117/MG-4471).

(2) As a consequence of the aforesaid violation, **Trackman C. M. Branum** shall be allowed thirty-one (31) hours of pay at his appropriate rate."

OPINION OF BOARD: On January 3, 1984, a broken water main was reported between Mile Post 1 and Mile Post 2 in Detroit. In the process of repairing the water main, a section of the third rail had **to** be removed by Force 1123, so that a hole could be dug **to** reach the pipe. After **removing** this section of track, the Track Force was assigned other duties. **However**, the **N&W** railroad supplied a flagman to insure the safe passage of trains through this area. The **N&W** supplied a flagman continuously from 4:00 P.M., January 3, until **3:30** A.M., January 5, 1984.

The Organization filed the instant Claim on behalf of **Trackman C. M. Branum** for 31 hours' pay on the basis that the work performed by the **N&W** employe was work exclusively reserved to **C&O** Maintenance of Way employes and that Claimant should have been used **to** do the flagging. In support of its position the Organization relies principally upon Rule 59, which specifies, *inter alia*, that Track Forces will perform work in connection with "patrolling and watching track...." Thus, the Employes maintain that the Carrier's action violated the seniority rights of the Claimant since track watching work is reserved to Track Forces.

The Carrier maintains that the assignment at issue did not belong to Maintenance of Way employes under the Agreement. Carrier insists that the practice at that location has been for **N&W** employes to flag **to** protect their own train **movements** on the third track and that flagging work has "ever bee" considered exclusively reserved to Maintenance of Way employes. The Carrier also refers the Board to Award No. 1 of Public Law Board No. 1210 and Award No. 13 of Public Law Board No. 2630 which it claims support the position advanced herein and demonstrate that there has been no rule violation.

After careful review of the record evidence in its entirety, we note that the Organization has bottomed its Submission on the alleged violation of Rule 59, a "scope rule," the thrust of which is that Maintenance of Way employees will be used whenever patrolling and watching track. However, so far as the Submissions show, the N&W employees were used to flag traffic. There is no evidence that by rule or practice the protection of train movements by flagging is reserved exclusively for Maintenance of Way employees.

Numerous Awards have held that it is incumbent upon the Organization to establish its claim by a preponderance of the evidence. See Third Division Award No. 19818; Public Law Board No. 1210, Award No. 1; Public Law Board No. 2630, Award No. 13. In the absence of facts showing that the work in dispute is reserved to employees under their Agreement, the Organization has failed to sustain its burden of proof.

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

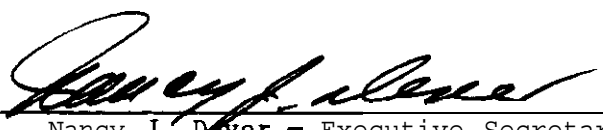
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.