

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26459
Docket Number MU-26166

Martin F. **Scheinman**, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The Carrier violated the Agreement when it assigned Car Department forces instead of Roadway Track Department forces to perform track work at Lufkin, Texas on April 13, 1983 (System File **MW-83-66/391-91-A**).

(2) Because of the aforesaid violation, furloughed Track Laborers E. J. Baggett, T. **Zackery** and R. D. Eaglin shall each be allowed four (4) hours of pay at their straight time rate."

OPINION OF BOARD: As Third Party in interest, the Brotherhood Railway Carmen of the United States and Canada was advised of the **pendency** of this case, but chose not to file a Submission with the Division.

During the week of April 4, 1983, a number of cars derailed on Carrier's Houston Division at Lufkin, Texas. Three Carmen performed certain work **necessary** to **reraill** the cars. According to the Organization, such work involved repair to the rails which should have been done by its members.

As a result, the Organization filed this Claim. Carrier rejected it. Upon the parties' failure to resolve the dispute on the property, the matter was advanced to this Board for adjudication.

The Organization contends that Carmen **repaired** the track at the derailment site. In support of this position, it cites a letter by-a **Carman** in which he states, "We . . . did perform said Maintenance of Way work." Thus, the Organization insists that the disputed work does belong to members of its craft. Accordingly, it asks that the Claim be sustained and that each Claimant be compensated four hours' pay at the straight time rate.

Carrier, however, argues that the disputed work involved simply the **rerailling** of cars which does not belong to the Organization pursuant to the Scope Rule. Therefore, it asks that the Claim be rejected.

A review of the record evidence convinces us that the Claim must fail. The letter cited by the Organization reveals only that the **Carman** performed duties **he** considered Maintenance of Way work. In fact, Carmen simply did what was necessary to **reraill** the cars. In so doing, they worked with the **rails**, not to repair them, but to permit the cars to be placed back on them.

Clearly, such work does not constitute repair of rails as suggested by the Organization. In this context, it is significant that the tracks were subsequently torn out and repaired by Maintenance of Way Employee.

Under these circumstances, we are convinced that work done to the rails by Carmen did not constitute repair work so as to fall under the Organization's Scope Rule. Accordingly, and for these reasons, the Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.