

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27921
Docket No. MW-26956
89-3-85-3-745

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned five (5) Clerical Department employees instead of Track Sub-department forces to clean right-of-way in the Los Angeles area on November 5, 1984 (System File M-78/-013-210-9).

(2) Because of the aforesaid violation, furloughed Sectionman R. L. Halle shall be allowed forty (40) hours of pay at the sectionman's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As Third Party in Interest, the Transportation Communications International Union was advised of the pendency of this dispute and did not file a Submission with the Division.

At the time this dispute arose, Claimant was a furloughed sectionman. On November 5, 1984, the Carrier assigned five clerks to walk track and pick up papers, bottles and debris in the Los Angeles area. Relying upon Rule 9 ("cleaning right of way"), the Organization asserts that the work in question fell within the scope of the Agreement and was improperly assigned to the clerks over Claimant. The Organization argues that Claimant should be compensated for the time worked by the five clerks.

In Third Division Award 26453, involving the same parties, we faced a similar question where the Carrier's officers cleaned scrap and debris from the right of way. We denied the Organization's Claim premised upon the same Rule language cited to us in this case and held:

"...[W]e find no clear evidence that the Agreement, particularly Rule 9, was violated. There has been no showing that Rule 9 applies to Terminal trackage or Yard track or that systemwide, Sectionmen exclusively performed this type of work at similar-type locations. ... Letters from Sectionmen and/or other craft employees would have been helpful here."

We find Award 26453 persuasive and binding. In this matter, no similar evidence has been presented. On the contrary, the Carrier has asserted without refutation that in the past Mechanical Department employees have cleaned areas where they worked on the right of way and clerical janitorial forces have also performed cleanup duties around stations and yards. Without more of a showing from the Organization as required in Award 26453, we must deny the Claim.

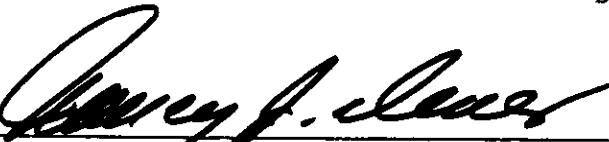
In light of the above, the Carrier's other arguments need not be addressed.

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 6th day of June 1989.