

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Grand Trunk Western Railroad Company (formerly The
(Detroit and Toledo Shore Line Railroad Company)

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

(1) The Carrier violated the Agreement when on October 21, 1987, it assigned four (4) trackmen, one (1) tamper operator, one (1) backhoe operator and one (1) truck driver who hold seniority under the Detroit, Toledo and Ironton Agreement to service and repair the Diamond at Mile Post 37.33 at F.N. Tower in Trenton, Michigan which is on territory covered by the Detroit, Toledo and Shore Line Agreement (Carrier's File 8365-1-243).

(2) As a consequence of the aforesaid violation, Detroit, Toledo and Shore Line Agreement Tamper Operator E. S. Burt, Truck Driver O. Rose, Backhoe Operator E. Merrell and Trackmen F. Watters, Jr., M. Callahan, W. England and F. Hammac shall each be allowed eight (8) hours of pay at their respective straight time rates."

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 employes 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.

On October 21, 1987, the Carrier used four Trackmen, one Tamper Operator, one Backhoe Operator and one Truck Driver to surface and repair the track diamond at Mile Post 37.33 at F. N. Tower, Trenton, Michigan. These employees held seniority under the Detroit, Toledo and Ironton Agreement. The Organization convincingly asserts this track diamond has been "customarily and historically" maintained by Detroit and Toledo Short Line employees under their separate Agreement. The work involved is such as is normally performed by employees in the Claimants' classification.

The Board has thoroughly reviewed the record in this case and finds that the Organization has met its burden of proof, whereas Carrier mounted what is an affirmative defense but failed to support that defense with any records whatsoever. Furthermore, if the Joint Facility Agreement would have supported Carrier, a copy thereof was not furnished until Carrier's Submission which is entirely too late to be considered by this Board.

The Board does not find that this Claim for work performed on one day is impaired because several Claimants were otherwise employed that day and others were in furlough status.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer, Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.