

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned Track Supervisor W. Breneman to perform the duties of a foreman on March 8, 1985 (System File NEC-BMWE-SD-1328).

(2) Foreman M. Rankin shall be allowed six (6) hours and thirty-three (33) minutes of pay at his straight time rate and five (5) hours and forty-two (42) minutes of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

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.

As Third Party in Interest, The American Railway and Airway Supervisors Association and the United Transportation Union were advised of the pendency of this dispute, but did not file a Submission with the Division.

At the time of this Claim, Claimant was employed as a Track Department Foreman at Lancaster, Pennsylvania, on the Carrier's Philadelphia Division. His hours were 7:00 A.M. to 3:30 P.M.

On Friday, March 8, 1985, a work train was scheduled to enter the track between Cork and Leaman on Claimant's division. That train was carrying rail and equipment to be unloaded and used for track maintenance work to be performed out of Lancaster. Under the Carrier's operating regulations, the unloading of such a train on active trackage must be performed under the protection of a "Form W" train order. The Carrier's Rule 829 states:

" . . . a Form 'W' Train Order must be used when track is obstructed for maintenance, unless otherwise provided by Special Instructions. The Train Order will be addressed by name to the Foreman requesting use of the track and to the Operators controlling entrance to the track."

The Organization complains that on the occasion in question between about 9:00 A.M. and 9:00 P.M., the Carrier allowed a Track Supervisor to take the track out of service between Cork and Leaman by addressing the Form W Order in his name. The Organization contends that Claimant was available for such work and had expressed the desire to work overtime after his tour ended at 3:30 P.M. According to the Organization, the Carrier violated the Agreement by giving this work to the Track Supervisor rather than Claimant.

The Carrier asserts that, for the sake of continuity, the Form W Order was issued in the name of the Track Supervisor on March 8, 1985. Otherwise, such an order would have had to be issued and repeatedly reissued in the names of the various Foremen who supervised work in connection with the piloting and unloading of the rail train on that date. The Carrier contends that the Track Supervisor himself performed no service accruing to the Foreman classification on March 8, 1985, and that in fact all such work was performed by at least three different Track Foremen, at least one of whom was on site during all the hours involved. In short, the Carrier argues that the work performed by the Track Supervisor was not work reserved to the Track Foreman classification or work to which Claimant had a right, and that the Organization has not shown that it was.

It is undisputed that the Rule titled "Scope and Work Classifications" in the parties' Agreement does not expressly reserve to employees represented by the Organization the activity of taking track out of service through a Form W train order. However, the Organization argues that the Carrier's Operating Rules and its established practice reserve that activity to Track Foremen. Furthermore, the Organization contends that the Track Supervisor also supervised the maintenance work performed pursuant to the Form W Order on the date in question, thereby usurping responsibility that clearly is reserved to Track Foremen. The Carrier disputes these assertions. The Carrier contends that Supervisors as well as employees of several other organizations traditionally have removed track from service pursuant to Form W Orders. The Carrier also insists that the Track Supervisor did no other work involved with the track maintenance operations on the subject date.

As the Carrier points out, it is the burden of the Organization when asserting a Claim such as this to establish that the work which it alleges was wrongly performed by others was work exclusively reserved by Agreement or established practice to the employees whom the Organization represents. This is a firmly established and familiar doctrine. In this case, however, the Organization has not proved what work in fact was performed by the Track Supervisor on March 8, 1985, much less proved that that work belonged only to the Organization. Instead, this is a case where the record contains a fundamental conflict in the evidence as to these critical elements. It is well established that, where the Board is confronted by such irreconcilable differences

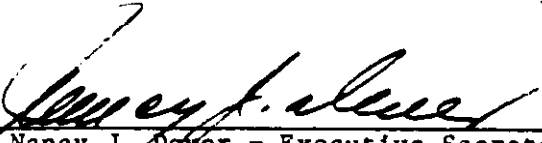
in the parties' versions of the facts underlying a Claim, the Board has no recourse other than to dismiss the Claim. See Third Division Awards 25973, 27178, 27195; Second Division Awards 11363, 8601. Since this is such a Claim, the Claim here must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.